

EXHIBIT "E"



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June 11, 2010

Re: Gift Card Litigation

Introduction

My name is Tomas J. Norton. I am principal of The Norton Group, a Banking Consulting firm which provides a broad range of management consulting, including, quality control, lending quality control, financial administration, processing operations, secured lending, etc. In addition, we have provided litigation support for clients inside and outside the banking industry including the submission of expert reports and testimony.

I personally have been a regulator. I have an extensive background in bank regulation and management including ten years with the Banking Department of the State of New Jersey and Chief Executive Positions in several banking institutions. I've been a member The Lending Committees in Regional Banks both in New Jersey and New York. I am a Certified Fraud Examiner (since 1993). My curriculum vitae is annexed hereto as Exhibit A.

I have prepared expert reports in approximately 150 cases and I have personally appeared as an expert witness in approximately 35 cases in Federal and Local Courts in New Jersey, New York, Pennsylvania and North Carolina. The list of cases I have participated in, over the past several years is annexed hereto as Exhibit B.

Counsel for the Plaintiff, Leonard V. Fodera, Esq., has requested that I independently review the following material and determine whether the disclosures provided by the Defendants to both the Gift Card Purchaser and the ultimate Recipient were adequate and/or within the industry standards. I reviewed the following materials:

1. An exemplar of what is handed to a purchaser of a Gift Card from Defendant.
2. Declaration of Lise Moncilovich, Senior Marketing Communications Manager for TD Bank, NA, including 59 tabbed exhibits consisting of gift card plastics, terms and conditions, Greeting Cards, card carriers and marketing materials used by Defendant in Pennsylvania and New Jersey.
3. TD Bank Gift Card Study Guide 2009, Bate-stamped TD000022-TD000035; (training material on selling Gift Cards for TD Bank employees)
4. Commerce Bank, "America's Got Red," Training Manual, Bate Stamped TD001224-TD001249.

In the course of my work on this matter, I have depended on my knowledge and long experience in the banking industry over 40 years, as well as my independent research on the subject matter.

Background

- The Commerce Bank, over a 35 year period beginning in 1973, grew from a one office location in southern New Jersey to a 450 office behemoth with total assets of over 50 billion dollars in 2008 when it was merged in to the TD Bank in March of 2008.
- Much of the Bank's success was attributed to an aggressive marketing campaigns and the dedicated philosophy to retail banking. (the strategic location of branch offices).
- Among the merchandising services offered to its customers was a reputed free Gift Card offer that began in the year 2004.
- These Gift Cards were the successor to gift checks which had been offered by the financial services industry for over the past 50 years where in turn the customer would purchase a bank check for a certain amount. The check in many instances would bear the overlay of a significant holiday and/or occasion (anniversary, birthday, etc.).
- Change in consumer preferences to credit and debit cards and with the technology available it was a natural expansion to provide Gift Cards to the consumer/Bank customer.
- In January 2005, shortly after the debut of the Commerce Bank Visa Gift Cards, the Bank's founder and Chairman of the Board, Vernon W. Hill

noted, "I am pleased to announce that we have changed the terms of the gift card to extend its best feature, that it's free. We have eliminated all conversion, expiration, reissue and other fees from the Commerce Bank Visa Gift Card there by liberating gift card users from unnecessary and inconvenient fees." (emphasis added)

- In the 5 ½ years since making that statement, Commerce Bank and its successor TD Bank has continually marketed its Visa Gift Cards as free, both through its advertising campaigns and public pronouncements in the news media.
- During the intervening five year period the fine print on the Card agreement (Terms) has gone through several changes, and continues to provide for certain fees included dormancy fees among others while continuing to propound the mantra of No Hassles, No Fees.
- These Cards are subject to the following fees:

<u>Replacement Card</u>	\$10.00	Lost, stolen or damaged cards.
<u>Conversion</u>	\$15.00	Cardholder can opt to convert the Card to cash or check or deposit the balance into a Commerce account.
<u>Service Fees</u>	\$2.50	There is a monthly service charge for the Card that begins on the first day of the month immediately following the 365 th day after the date your Card was purchased.

- The disclosures on the Gift Card itself and the material accompanying the Card have gone through several changes. Resulting in the purported final incarnation that was submitted by the Defendant as an Exemplar in a

green box which included a blank greeting card and a plastic card containing the TD Bank logo and the word gift on it. The Card appears to be vintage of August 2009 (08/09).

- Hidden in a compartment of the Gift Card greeting card is a four sided card (3x4) titled "Terms" having approximately 170 lines in very fine print.

Terms (see insert- actual size)

- "The administration fee (for the Card) is a monthly fee and begins with the purchase date; it is waived for the first 12 months.
- The administration fee will reduce the card balance and may consume the balance before the "Good Thru" date on the Card."
- This statement contradicts the various advertisements and pronouncements and other marketing ploys by the Commerce/TD Bank in alluding to "Free" which they have trumpeted in news releases and advertising since the inception of the Gift Card Program.
- The consumer/purchaser is introduced to the Gift Cards through a marketing program that was initiated by the Bank, news releases and in-house advertising, all designed to promote the product (Bank Gift Cards). Thus drawn in the consumer/purchaser meets with a Bank representative.
- In view of the conflicting terms stated in the agreement when purchasing the subject Gift Cards and the method on which they are delivered extremely small print hidden in a pocket of an insert, which is designed to be abandoned immediately upon opening since the purpose of the wrapping is to deliver a plastic card for continuing use as a monetary

Validity of Your TD Bank Visa® Gift Card: a. **Expired Cards:** Your TD Bank Visa® Gift Card will be valid for use until the "Good Thru" date shown on the front of your Card. The Administration Fee may consume the balance of your Card before the Expiration Date. We encourage you to use the entire gift amount before the "Good Thru" date shown on the Card. Different states may vary the period during which a Card is valid for use. If there is any remaining unused balance on the Card after the "Good Thru" date, present the Card at any TD Bank Store and we will reissue a new Card to you in an amount equal to the remaining balance or issue a check to you for the amount of the remaining balance at no charge.

Cancellation: a. **Issuer and Owner:** Your TD Bank Visa® Gift Card is issued by TD Bank, N.A. We are the owner of the Card. The TD Bank Visa® Gift Card will remain our property. We may cancel your right to use the TD Bank Visa® Gift Card at any time and have you return the Card to us. b. **Change in the Program:** We may change the terms of, add new terms to, or discontinue this Gift Card Agreement or the program at any time, and without giving you notice, subject to applicable law. Check www.tdbank.com/giftcards for posting of the most recent terms.

Other Terms and Conditions: Neither TD Bank, N.A. nor any other TD Bank corporate affiliate will be liable to you for failure to honor the TD Bank Visa® Gift Card.

TD Bank Visa® Gift Card Service Charges: Purchase Price for Gift Card (plus the dollar value to be put on card): \$0.00; Miscellaneous Fees that may be deducted from the Card balance: (1) Replacement Card = \$10.00, (2) Express Delivery of Card = \$35.00, (3) Check issuance = \$20.00 (4) Administration Fee = \$2.50 (5) International Service Assessment Fee.

Governing Law; Venue; Severability: This Agreement and its performance shall be governed by the laws and regulations of the United States and, to the extent not governed by federal laws and regulations, by the laws and regulations of the State of Delaware notwithstanding any choice of law principles. You and the Bank each hereby irrevocably consent and submit to the exclusive jurisdiction of the Courts of the State of Delaware sitting in the County of New Castle or the United States District Court for the District of Delaware in any and all actions and proceedings questions or controversies arising under or related to this Agreement, the Card or its use. If any term of this Agreement is found by a court to be unenforceable or illegal, all other terms and conditions will still be in effect. a. **Electronic Funds Transfer Act Does Not Apply:** Neither the Electronic Funds Transfer Act nor Regulation E thereunder applies to the TD Bank Visa® Gift Card. Therefore, this Agreement is the only provision that a signatory and the only disclosure that you will receive from us. Please retain this for future reference. b. **Not FDIC Insured.** The TD Bank Visa® Gift Card balance is not an FDIC insured deposit.

Questions or Comments: If you have any questions concerning your TD Bank Visa® Gift Card, please visit www.tdbank.com/giftcards or write to us at TD Bank Gift Card Services, P.O. Box 1377, Lewiston, ME, 04243-1377.

* The Administration Fee is a monthly fee and begins at the purchase date. It is waived for the first 12 months. The administration fee will reduce the Card balance and may consume the balance before the "Good Thru" date on your Card.

* Refer to Transaction Limitations, section (d) within this Agreement.

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62-3761-8 (11/09)

TD Bank Visa® Gift Card Agreement—Effective September 2009

The Card becomes active no later than the end of the next business day after its purchase. For more information, please refer to www.tdbank.com/giftcards. The following terms and conditions ("Agreement") govern the use of your TD Bank Visa® Gift Card ("Card"). In this Agreement, the words "you" and "your" mean: (a) the person to whom we issue the Card; (b) the person receiving the Card; and (c) the person using the Card. The words "we," "us," "our" and "Bank" mean TD Bank, N.A., a national banking association. Please read this Agreement carefully and keep it for your records. You will be deemed to have accepted the terms of this Agreement if any of the following are done by you: (a) or by another person with your consent or authorization: (a) purchase the Card; (b) sign the back of the Card; (c) use the Card; (d) authorize any other person to use the Card; (e) retain the Card; or (f) activate the Card. Please read this Agreement carefully, retain it with the Card and provide it to anyone to whom the Card is given.

Card Description and How the Card Works: Please sign and register your Card immediately. The Card is a proprietary form of a Visa non-reloadable stored value card. The Card is not linked to nor does it access, in any way, any checking or other accounts at our Bank. The Card is not a credit card. No interest will be paid on the balances transferred to the Card and such balances are not FDIC insured. The TD Bank Visa® Gift Card is non-reloadable and cannot be reused after the original purchased value has been used. You acknowledge and agree that the amount available on the Card is limited to the prepaid U.S. dollar value loaded on the Card at the time of purchase. No additional funds may be added to the Card. This amount is prepaid by the purchaser of the Card, and the amount available will decrease each time you use the Card to make a purchase or you incur, or we assess, a fee or charge. Your TD Bank Visa® Gift Card is issued by TD Bank, N.A. The Card does not have a Personal Identification Number ("PIN"). It is not enabled for PIN transactions and may not be used to obtain cash at ATM machines. The Card cannot be used for cash advances and cannot be exchanged for cash at stores or other financial institutions.

Balance on the Card: The value of the funds available on the Card at any given time is referred to in this Agreement as the "Balance." No interest will be paid on the Card Balance and such balances are not deposits and are not FDIC insured. You acknowledge and agree that the Balance on the Card is limited to the dollar value established when the Card was purchased. The Balance will decrease each time you use the Card to make an authorized transaction or you incur, or we assess, a fee or charge. As you use the Card, the Balance will be reduced by the full amount of each purchase including taxes, and any other fees ("Transaction Amount"). You agree that the amount of funds shown on the Bank's records will determine the Card Balance. Once the Balance is depleted, the Card is no longer valid and you agree (a) not to use the Card; and (b) after you are sure that you do not intend to return any merchandise purchased with the Card, to cut it in half and discard it. Whenever you use the Card to make an authorized transaction, you are authorizing us to reduce the Card Balance by an amount equal to the Transaction Amount. At the time of each purchase the Merchant will obtain an approval for the Transaction Amount to ensure adequate funds are available. You agree to keep track of the balance on your Card by using our website or by calling toll free within the United States - 1-800-884-4593 ("Customer Service Number") and not to use the Card for any purchase that exceeds the Balance except as permitted by this Agreement (see section - "Purchases That Exceed the Value of the Card").

Using Your Card: a. **Registering the Card:** You or the person to whom you give the Card as a gift should register the Card at <http://tdbank.com/giftcardinfo> or call 1-800-884-4593. b. **Record Your Card Number:** Record your Card Number in a safe place separate from the Card. You will need your Card Number when reporting a lost or stolen Card or unauthorized transactions. c. **Signature of Cardholder:** You or the person to whom you give the Card as a gift must sign the back before they use the Card. d. **By Signature at Merchants:** To pay for purchases at merchants who display the Visa® Debit Card logo and have agreed to accept the Card. Sign the sales receipt to complete the transaction. If there's a keypad, tell the salesperson that you prefer to sign for your purchase. Usually, you will need to push the "CREDIT" payment option. There is no cost for this service. e. **At Gas Stations:** The TD Bank Visa® Gift Card can be used at gas stations; however, at gas stations with a "pay at the pump" capability, the Card cannot be authorized directly at the pump. Simply present the Card to the attendant for payment. Sign the sales receipt to complete the transaction. If there's a keypad, tell the salesperson that you prefer to sign for your purchase. Usually, you will need to push the "credit" payment option.

Transaction Limitations: a. **Nontransferable Once Signed:** The TD Bank Visa® Gift Card may be used by the purchaser or given as a gift to another person. However, once the Card is signed, it is non-transferable. Please do not sign the Card if you intend to give it as a gift to another person. The person who receives it as a gift should be the person who signs it. b. **Point of Sale Use:** Some Merchants, such as gasoline stations, hotels, restaurants and other merchants that accept credit cards, receive and hold funds for a greater amount than the actual purchase price to allow for additional purchase price and gratuity. For restaurants and other merchants, this is generally 20% or more than the original purchase price amount and it will result in a hold on your available funds on the Card for the original purchase amount and the additional amount. This hold will remain in effect until we receive the transaction from the Merchant or seven (7) business days, whichever occurs first. During the hold period the funds will be unavailable. c. **Purchases That Exceed the Value of the Card:** If the amount of your purchase is greater than the amount available on your Card, the difference can be paid with another form of payment, depending on the policy of the merchant. Any transaction attempted for more than the amount available on the TD Bank Visa® Gift Card will be declined. You must know the amount available on your Card and inform the merchant to process the transaction in that amount. Depending on the Merchant's policy, you may be able to use your Card toward a portion of the final purchase price, and then use another form of payment to pay the balance of the final purchase price. d. **International ATM Card or Visa® Debit Card Transactions:** The exchange rate between the transaction currency and the billing currency used for processing international ATM Card or Visa® Debit Card transactions is the transaction currency and the billing currency used for processing international ATM Card or Visa® Debit Card transactions. The exchange rate between which may vary from the rate Visa® itself receives, or the government-mandated rate in effect for the applicable central bank processing date. In addition, on all International ATM Card or Visa® Debit Card transactions the Bank may charge an International Service Assessment Fee of up to 1% to offset the Bank's costs for Visa® services. e. **The Card does not have a PIN** and is not enabled for PIN transactions. It cannot be used to obtain cash at ATM machines or at Bank Stores, or at point-of-sale terminals that require a PIN. f. **Additional Transactions:** You shall not use your Gift Card for any illegal transaction. We may decline authorization for any illegal transaction or internet gambling transaction. g. **Returns and Exchanges:** The Bank, Visa® and their affiliates, employees and agents are not responsible for the services or merchandise purchased with the Card and we are not responsible for the return or exchange of merchandise purchased with the Card. By use of this Card, you agree that we are

Terms

not liable for any consequential damages, direct or indirect. If you think an error has occurred involving a transaction, the error needs to be adjusted and resolved with the Merchant at whose establishment the transaction was made. Exchange or return of merchandise purchased in whole or in part with the Card will be governed by the procedures and policies of each Merchant and applicable laws. Return and refund policies are dependent on the Merchant from whom the purchase was made. At the time of any exchange or return, you should present both the merchandise receipt and the Card. Availability of credits added to the Balance may vary by Merchant.

How to Obtain Your Card Balance or Obtain Information on Transactions Previously Made: It is important that you keep track of the balance on your Card. To check your TD Bank Visa® Gift Card balance or to get a summary of the transactions you have made, call TD Bank Gift Card Services' automated toll-free telephone number at 1-800-884-4593 or go to <http://tdbank.com/giftcardinfo>. You are encouraged to use your Card as soon as possible and use the entire balance. You will need your Card Number to receive information. You should be issued a receipt for each transaction you make, unless your transaction totals \$15.00 or less, but you will not receive a statement or written summary of transactions.

Theft, Unauthorized Use or Loss of Your Card: (Please note that the Card must be registered online at <http://tdbank.com/giftcardinfo> or by phone 1-800-884-4593 to increase your chances of recovering disputed transactions.) **https://tdbank.com/giftcardinfo** or by phone 1-800-884-4593 to increase your chances of recovering disputed transactions.) **Unauthorized Use of Card:** You are responsible for all authorized and unauthorized uses of your Card, except to the extent that applicable law may protect you from liability for unauthorized purchases. b. **What to Do if You Believe Your Card is Stolen or Unavailable:** Notify us immediately at 1-800-884-4593. You will need your Card Number to receive information. c. **What to Do if Your Card is Lost:** If you lose your Card, it is like losing cash and we may either reissue the Card or refund your money. However, we advise you to report the loss of the Card by calling us at 1-800-884-4593 as soon as you discover the loss. If Replacement for Damaged Cards: A replacement Card can be issued for the value remaining on any damaged Card and the original Card will be canceled. A Service Charge may be assessed for this service. The Service Charge will be deducted from your remaining balance at the time a replacement Card is issued.

The Following Notice Contains Information About Your Right to Dispute Errors: a. **What to Do About Suspected Errors:** In case of errors or questions about electronic transactions on the Card, write to us at TD Bank Gift Card Services, P.O. Box 1377, Lewiston, ME, 04243-1377. b. **Information You Must Give to Us:** When you make your inquiry about the suspected error, you must supply us the following information:

- Your name and the Card Number.
- A description of the error or the transaction you are unsure about and a clear explanation of why you believe it is an error or why you need more information.
- The dollar amount of the suspected error.
- What Happens if We Believe No Error Occurred: If we decide there was no error we will generally send you a written explanation within three (3) Business Days, after we finish our investigation. You may ask for copies of the documents that we used in our investigation. d. **Disputes with Merchant:** If you have a problem with any goods or services you purchase using the Card, you agree to settle any disputes arising from the problem directly with the merchant who provided the goods or services.

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authorization, contact us immediately at 1-866-767-9119 or in writing at TD Bank Visa Gift Card, P.O. Box 550578, Fort Lauderdale, FL 33355. To receive a new Card for the remaining Balance you will have to provide us with information, including your Card number or other identifying details that confirms that you are the legitimate owner of the Card. We cannot provide a replacement Card if you do not have your Card number available. If our records show that a Balance remains on the Card, we will cancel the Card and send you a replacement Card at no charge. The replacement Card will be in the amount of the Card balance on your last Validated Card at the time you notified us that it was lost/stolen. No refunds will be provided for amounts debited from your lost/stolen Card before you notify us. If you believe that your Card was used without your permission, we will ask you to provide information, in writing, that enables us to investigate the transaction(s). In most cases, we will complete this investigation within sixty (60) days of receiving the requested information. If more time is needed, we will notify you in writing, and we will complete the investigation within an additional thirty (30) days. If we can validate your claim, we will credit your Card if we have not released a new Card for the amount of the unauthorized purchase(s) once the investigation is completed.

Notice About Your Right to Dispute Errors: In case of errors or questions about electronic transactions on the Card, write us at TD Bank Visa Gift Card Disputes, P.O. Box 550578, Fort Lauderdale, FL 33355 as soon as you think an error exists. We must hear from you no later than sixty (60) days after the transaction listed on the statement or receipt or after the transaction in question has been made available to you on line. You must (1) advise us in writing and indicate your name and Card account number, (2) describe in writing why you believe the transaction is in error, (3) the dollar amount of the suspected error. Generally we will tell you the results of the investigation within ten (10) business days after we hear from you and we will promptly correct any error. If we need more time we may take up to forty-five (45) days to investigate your question. If we decide there was not an error, we will send you a written explanation within three (3) business days after we finish our investigation. You may ask for copies of documents that we used in our investigation.

Confidentiality: We may disclose information to third parties about your Card or the transactions that you make if it is necessary to complete a transaction, to verify the existence and condition of your Card, to resolve an error or an inquiry as to an alleged error, to comply with a legal subpoena or other mandatory disclosure requirements, or if you give us permission.

No Warranty: Bank does not give up its rights by delaying or failing to exercise them at any time.

Amendments: Bank may amend this Agreement from time to time. Amendments will be effective after notice has been posted on our website at TDBank.com/giftcard or as otherwise required by law. Provisions changed pursuant to bank regulatory authority will be effective according to applicable regulation without further notice.

Governing Law and Venue: This Agreement and its performance shall be governed by the laws and regulations of the United States and, to the extent not governed by federal laws and regulations, by the laws and regulations of the State of Delaware notwithstanding any choice of law principles. You and the Bank each hereby irrevocably consent and submit to the exclusive jurisdiction of the Courts of the State of Delaware sitting in the County of New Castle or in the United States District Court for the District of Delaware in any and all actions and proceedings questions or controversies arising under or related to this Agreement, the Card or its use. If any term of this Agreement is found by a court to be unenforceable or illegal, all other terms and conditions will still be in effect.

TD Bank Visa® Gift Card Agreement

The Card becomes active no later than the end of the next business day after its purchase. For more information, please refer to TDBank.com/giftcard. The following terms and conditions ("Agreement") govern the use of your TD Bank Visa® Gift Card ("Card"). In this Agreement, the words "you" and "your" mean (a) the person to whom you issue the Card; (b) the person receiving the Card; and (c) the person using the Card. The words "we," "us," "our" and "Bank" mean TD Bank, N.A., a national banking association. Please read this Agreement carefully and keep it for your records. You will be deemed to have accepted the terms of this Agreement if any of the following are done by you or by another person with your consent or authorization: (a) purchase the Card; (b) sign the back of the Card; (c) use the Card; (d) authorize any other person to use the Card; (e) retain the Card; or (f) activate the Card. Please read this Agreement carefully and retain it with the Card.

Card Description: Please sign your Card immediately. Your Card is issued by TD Bank, N.A. The Card is a non-reloadable prepaid Visa debit card that may be used to make signature-based purchases (including mail order and online) and that accept Visa debit cards ("Merchant"). The Card is not a credit card and does not have a line of credit attached to it. There is no separate deposit account established in your name at the Bank for the Card, and the Card is not linked to any of your checking, savings, debit card or credit card accounts. The Card does not have a personal identification number ("PIN"). It is not enabled for PIN transactions and may not be used to obtain cash at ATM machines. The Card cannot be cashed out for cash or be used to withdraw cash from tellers at Bank branches or other financial institutions. To use the Card at a Merchant, present the Card at the time of payment and sign the receipt with the same signature you used when you signed the back of the Card. Retain the receipt as a record of the transaction.

Available Funds on the Card: The value of the funds available on the Card at any given time is referred to in this Agreement as the "Balance." No interest will be paid on the Card Balance and such Balances are not deposits and are not FDIC insured. You acknowledge and agree that the Balance on the Card is linked to the dollar value established when the Card was purchased. The Balance will decrease each time you use the Card to make an authorized transaction or you incur, or we assess, a fee or charge. As you use the Card, the Balance will be reduced by the full amount of each purchase including taxes, and any other fees ("transaction amount"). You agree that the amount of funds shown on the Bank's records will determine the Card Balance. Once the Balance is depleted, the Card is no longer valid and you agree (a) not to use the Card and (b) after you are sure that you do not intend to return any merchandise purchased with the Card, to cut it in half and discard it. Whenever you use the Card to make an authorized transaction, you are authorizing us to reduce the Card Balance by an amount equal to the transaction amount. At the time of each purchase the Merchant will print an approval for the Transaction Amount to ensure adequate funds are available. You agree to keep track of the Balance on your Card by using our website or by calling toll free within the United States - 1-866-767-9119 ("Customer Service Number") and not to use the Card for any purchase that exceeds the Balance except as permitted by this Agreement (see the section - "Purchases Exceeding the Card Balance" in this Agreement).

Fraud as a Complete Transaction: We accept no liability to complete any transaction for which adequate funds have not been supplied by you according to the rules of the Card. We are not responsible if you do not have enough money in the Card account to complete a particular transaction. Neither we nor any other bank or business will be liable to you for failure to accept or honor the Card.

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Tracking the Card Balance: You must keep track of the Card Balance. To obtain your Balance or to view previous transactions, visit TDBank.com/giftcard or call the Customer Service Number. Your Balance will reflect all authorization requests that have been submitted by Merchants. If you have a question about your Balance (e.g., the same transaction has been posted twice or for the incorrect amount), you agree to notify us immediately but no later than sixty (60) days from the date of the transaction, by calling the Customer Service Number. While the Card may no longer be used after the "Active Thru" date printed on the Card, the Balance on the Card does not expire. The Balance may be reduced by service fees or other fees as described in this Agreement. If a Balance remains on the Card after the "Active Thru" date, call the Customer Service Number to obtain a replacement Card. We may mail up to ten (10) business days following your request to send your replacement Card in order to allow for pending transactions to be posted.

Unclaimed Funds: We encourage you to use your Card as soon as possible and to use the entire Balance amount. A "split-tender" transaction may be used to deplete the entire Card Balance (see the section - "Purchases Exceeding the Card Balance" in this Agreement). The Balance remaining on the Card may become unclaimed funds escheatable to a state. If as shown by the Bank's records, you have not within the applicable state's statutory period, requested refund of unused funds on your expired or canceled Card, and corresponded with the Bank concerning the Card, or transacted any business on the Card, if that occurs, the funds will escheat pursuant to applicable state law.

Before Using the Card: The Card becomes active no later than the end of the next business day after its purchase. Before using our Card, you must sign it on the back where indicated. Write down the Card Number and the Customer Service Number on a separate piece of paper in case the Card is lost or stolen. If you are required to activate the Card, instructions will accompany the Card. During activation or any Customer Service call, we may request that you provide the 3-digit Card security code printed on the back of your Card, as well as additional identification information. We strongly encourage you to register your Card at TDBank.com/giftcard and review the Bank's privacy policy which is available in all branch offices and online at TDBank.com/privacy. Registering our Card identifies you as the owner of the Card. Information provided during registration, including your name, address and phone number, may be used to authorize online purchases and is required to process requests to replace a lost or stolen Card.

Card Usage and Limitations: The Card becomes active no later than the end of the next business day after its purchase. You agree to use the Card only at Merchants and only for lawful purposes. Your Card can be used to make purchases at any Merchant that accepts Visa debit cards including mail order and online Merchants. The Card may be used when there is a remaining balance on it, up to the amount that remains. Purchases will be deducted from your Card until the value reaches zero. If insufficient funds remain on your Card to complete a transaction, the transaction will be declined. If you want to make a purchase that exceeds the amount available on your Card, you may be able to pay the difference with another form of payment, depending on the Merchant's policy. If, for some reason, a transaction that exceeds the value on the Card is completed, you will be liable for the negative Balance. The Card is not transferable and you agree not to permit any other person to use your Card after it is paid. If you believe your Card has been lost or stolen, you agree to notify us immediately. Any problems or disputes you may have regarding a product or service purchased with the Card should be addressed directly with the Merchant. The Card does not have a PIN and is not enabled for PIN transactions. It cannot be used to obtain cash at ATM machines or at Bank branches, at point-of-sale terminals that require the use of a PIN. Your Card also cannot be used for any cash advances, for internet lottery, betting, or gambling transactions or for any illegal transactions.

Purchases Exceeding the Card Balance: If you wish to use your Card to purchase an item for more than your Card Balance, depending on the Merchant's policy, you may be able to use your Card toward a portion of the final purchase price, and then use another form of payment to pay the balance of the final purchase price.

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Hold Merchants: Some Merchants, such as gasoline stations, hotels, restaurants and other merchants that accept prepaid, receive authorization for a greater amount than the actual purchase price to allow for additional services or penalty. For restaurants and personal services merchants, this is generally 20% or more than the original purchase price amount and it will result in a hold on your available funds on the Card for the original purchase amount and the additional amount. This hold will remain in effect until we receive the transaction from the Merchant or seven (7) business days, whichever occurs first. During the hold period the funds will be unavailable.

Returns and Exchanges: The Bank, Visa and their affiliates, employees and agents are not responsible for the services or merchandise purchased with the Card and are not responsible for the return or exchange of merchandise purchased with the Card. By use of this Card you agree that we are not liable for any consequential damages, direct or indirect. If you think an error has occurred involving a transaction, the error needs to be activated and resolved with the Merchant at whose establishment the transaction was made. Exchange or return of merchandise purchased in whole or in part with the Card will be governed by the procedures and policies of each Merchant and applicable law. Return and refund policies are dependent on the Merchant from whom the purchase was made. At the time of any exchange or return, you should present both the merchandise receipt and the Card. Availability of credits added to the Balance may vary by Merchant.

Foreign Transactions: If a Card is used to make a purchase outside the United States, the network that handles the transaction will convert the local currency amount of the transaction to U.S. dollars. If the network converts the currency, it will use either a rate selected by the network from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate the Visa network itself receives, or the government-endorsed rate in effect for the applicable central processing date. For each purchase transaction in a foreign currency, we may also charge a Foreign Currency Conversion Fee and an international service assessment fee, which is 1% of the network transaction amount (which will be shown as a separate charge) to offset the Bank's costs.

Service Fees: We encourage you to use your Card as soon as possible and to use the entire Balance. A "split-tender" transaction may be used to deplete the entire Card Balance (see the section - "Purchases Exceeding the Card Balance" in this Agreement). There is a monthly service charge for the Card that begins on the first day of the month immediately following the 365th day after the date your Card was purchased. While you may leave Available Funds as defined herein, on the Card, starting on the first day of the month immediately following the 365th day after the date your Card was purchased, and subject to applicable law, we will deduct a monthly service fee of \$2.50 from your Balance. If we send you a replacement Card for a lost or stolen Card, the initial 365-day period is still tracked from the date your original Card was purchased. The monthly service fee continues until the Card has a zero Balance. If the Card Balance is zero or becomes zero as a result of this fee, the Card will be cancelled. Any fees or charges authorized by this Agreement will be charged to the Card.

Cancellation: The Bank may cancel or suspend use of the Card at any time without prior notice to you. You agree (1) that the Card is the Bank's property; and (2) that you will cut your canceled Card in two parts immediately upon our request and return the Card to us. If funds remain on the Card at cancellation, call 1-866-767-9119 to request a refund of the remaining funds, less applicable fees. Any refund will be sent to your last known address according to the Bank's records.

Lost or Stolen Cards: You agree to safeguard your Card and treat it like cash. We strongly encourage you to register your Card online at TDBank.com/giftcard. If your Card is lost, stolen or damaged, if you suspect that it has been used without your

instrument. There is no doubt that the average consumer/recipient discards the wrapping material and goes about their business with little or no thought to the contractual obligation the Bank has thrust upon the purchaser of the Gift Card.

- These terms and conditions represent a non-negotiable agreement that is offered to the consumer on a “take it or leave it” basis.
- In those versions of the terms and conditions that do disclose the monthly service fee, the disclosure itself is the same size and type font as the provisions of the terms and conditions around it. The disclosure related to fees is not bolded, or set off in any way from the provisions around it.
- The Bank personnel after inquiring as to the amount of the Card requested and method of payment, give the completely finished product, a boxed Gift Card to the consumer/purchaser without allowing the consumer/purchaser to see any of the terms of the transaction and without any further explanation of the transaction. The Bank training materials instruct the Bank personnel to simply inform the purchaser that terms and conditions govern the Card, without any specific reference to alerting the purchaser about the fees.
- During the same period the world’s largest provider of prepaid financial instruments (American Express) has initiated similar Cards at a fixed fee when purchased and no other fees throughout the life of the Card.
- Our research shows that neither the public pronouncements nor the advertising and other media channels the Defendant Commerce/TD Bank

used, never provided the transparency regarding the charging of fees noted in the schedule earlier in clarifying its "free" message when in fact fees are charged for a variety of services on the Gift Cards.

- Notwithstanding their minimal efforts to change the presentment of the material in the Gift Card package¹:
 - Concerning the monthly \$2.50 inactivity fee
 - The other fees noted earlier
- Taken in its totality the Defendant Bank's representations from the outset of the Gift Card Program to the present and its presentment of the final product to its customer have been fraught with lack of transparency in its relationship to the "Purchasers" of its Gift Cards.

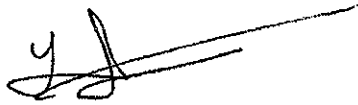
In Summary

The "Free Gift Cards" do not meet the test of proper disclosure of the terms of the agreement by:

- a. Using extremely "fine print" (without prominent display type)
- b. Hiding the terms in an inconspicuous pouch in the greeting card that accompanies the Gift Card.
- c. Taking unfair advantage of the Customer/Recipient of the Cards since there is virtually no transparency regarding the fee structure in the material provided with the Gift Cards.

¹ Including TD000114 & TD000115 which can be described as a "stream of consciousness" like paragraph of the terms of the agreement in extremely small print without the required emphasis on the consumer duties.

It is my opinion that the actions of Commerce/TD Bank in its efforts to gain a competitive advantage on other competing financial institutions, has been unconscionable in its promotion of the pre-gift wrapped Commerce/TD Bank Visa Gift Card and violate the concept of good faith and fair dealing.

A handwritten signature in black ink, appearing to be 'TJ Norton', with a long horizontal stroke extending to the right.

Tomas J. Norton, CFE

EXHIBIT "F"



924 Cherry Street, First Floor
Philadelphia PA 19107-2405
T: 215.627.4122
F: 215.627.4335
E: info@dscience.com
www.dscience.com

June 10, 2010

Leonard V. Fodera, Esquire
Silverman & Fodera
1835 Market St., Suite 2600
Philadelphia, PA 19103

Re: TD Bank Litigation

Dear Mr. Fodera:

The purpose of this letter is to report my analysis of certain human factors issues associated with the gift cards sold by TD Bank and Commerce Bank, prior to its acquisition by TD Bank. In preparation for my report, I reviewed, inter alia, the following materials:

1. Class Action Complaint.
2. An exemplar gift card, including its packaging and greeting- card insert.
3. Declaration of Lise Moncilovich, with exhibits.
4. Commerce Bank press release regarding gift cards, dated 12/7/04.
5. Commerce Bank, "America's Got Red," employee training manual regarding gift cards.
6. TD Bank Gift Card Study Guide.

I understand that Commerce Bank began selling gift cards in 2004, a practice continued by TD Bank, which acquired Commerce Bank in 2008. One consistent characteristic of the gift cards is that the banks collect a monthly fee, a so-called *dormancy fee*, from the remaining balance of the cards, beginning typically 12 months after they are sold¹.

The question that you have asked me to address is whether or not the information provided to the purchaser and to the recipient by Commerce

¹ At one point, this monthly *dormancy fee* was collected beginning six months after the card was purchased.

USER
RESEARCH

HUMAN
F/ORS
ANALYSIS

INTERACTION
DESIGN



Bank and by TD Bank was/is sufficient to make it reasonably likely that the purchasers and the recipients would be alerted to the presence of the dormancy fees. The results of my analysis are presented below, after a brief discussion of my field of expertise, human factors.

Human factors

The discipline of human factors involves the study of human capabilities, limitations, and tendencies and the application of this type of information to the design of the things that humans use, including information such as instructions and warnings. Human factors professionals study, among other things, how people use instructions and other forms of information and how information can be effectively provided in different contexts.

Understanding such issues requires specialized knowledge that is beyond that of the typical layperson.

The discipline of human factors has been accepted as important at least since World War II, when the military recognized the need for knowledge about the *users* of systems, in addition to more traditional engineering considerations, in order to develop systems that were adequately safe and easy to use.

Today, human factors is explicitly recognized by the National Safety Council, the U.S. Food and Drug Administration, all branches of the U.S. Military, and many other agencies and organizations, as the basis of reliable and important technical information regarding how to design products, systems, and information to be usable. The field has a professional organization, the Human Factors and Ergonomics Society, a body of technical information, as published in professional journals, monographs, and conference proceedings, and scientific/engineering methodologies that are applied to solving various classes of problems.

My own background (I have a Ph.D. in Experimental Psychology) is typical of members of the Human Factors and Ergonomics Society. Psychology is the most common source of the information about human beings that is applied to problem solving in the discipline of Human Factors.

In analyzing the effectiveness of the information in question, I have applied a methodology that is widely used by human factors professionals. I have carefully examined the facts, in light of basic facts and principles of human factors. In doing so, I have relied upon my education (in fact, my



major areas of specialization in graduate school were visual perception and the psychology of language) and my 26 years of experience in the field, during which I have designed and tested many instructions and other text-based materials.

Expectations

The first question, from a human factors perspective, is whether or not people would naturally expect the dormancy fees. In fact, the fees that Commerce Bank and TD Bank automatically collected were unlikely to be expected. Based upon the "time value" of money principal, one would normally expect that money loaned to a bank would increase in value over time. However, in this case, the card's value goes *down* the longer it is held. It follows that it is counter-intuitive that what is, in effect, a loan to the bank will generate fees *from the lender to the borrower* that increase the longer the bank holds the money (which it, no doubt, obtains interest from). This is clearly at odds with the pattern with which anyone who has borrowed money would be familiar.

Thus, without receiving adequate information on the subject, the typical person would not expect the dormancy fees. The question, then, is whether or not the information provided was adequate to alert purchasers and recipients to the presence of these fees.

Information provided to the purchasers

I have carefully reviewed the information provided to the purchaser of the gift cards, and I note that purchasers were provided absolutely no information about the fees, and, in fact, they were provided with misleading information. This conclusion is based upon my understanding that a typical purchaser would first see a reference to the gift cards via marketing/advertising materials or hear about them in some other way, then buy the card from a bank employee, or, alternatively, fill out an order form. Thus, the information-conveying vehicles regarding cards included:

1. The posters and related advertising materials.
2. The order forms.
3. The messages that they received from bank employees.



The posters, advertising, etc. that I have seen all either referred to the cards as "free" or having "no purchase fee", or both. It was normal and reasonable to conclude from the use of such terms that there were no fees. There was no reference whatsoever to the dormancy fees in these materials.

Likewise, the order forms contained no reference to the fees.

I have reviewed the employee training materials that instructed employees in how to present the cards and that provided step-by-step instructions regarding how to sell them. There were no references to the dormancy fees. Bank employees are simply instructed to inform purchasers that the cards are governed by terms and conditions, but, for reasons stated below, the terms and conditions are also inadequate as they relate to the dormancy fees. Unless a potential purchaser directly asked a customer service representative if this dormancy fee existed, the purchaser would not be given that information.

In sum, there was no reason for purchasers to expect the fees and no information provided to purchasers to alert them to the presence of the fees.

Information provided to the recipients

The recipients received the cards themselves and some combination of the following materials that contained references to the fees:

1. Terms of conditions
2. Card carriers with "FAQs".
3. Greeting cards that contained terms and conditions.

None of these materials provided information about the dormancy fees likely to come to the attention of the recipients. Let me discuss each of them in turn.

The cards

The reference to the fees on the cards themselves, first of all, did not even appear on the cards sold from 2004 to 2007. When it did appear, it was



"buried" in the fine print on the back. Evidence indicates that people are unlikely to read even things like assembly instructions until they need them—until they are in an "information-seeking" mode. Also, the likelihood of text being read is related to how conspicuous it is made by color, point size, graphics, etc. (cf., Wogalter, et al., *Warnings and Risk Communication*, 1999). There was simply no reason for people to pay any attention to this fine print on the back of the card. In other words, people have to have a reason to seek information before they are likely to notice it, something that is simply not true of the recipient of a gift card vis a vis the fine print on the back of the card.

There are a number of methods for making messages conspicuous, such as the use of contrasting color, larger point-size type, use of specialized headline words, like "NOTE", use of graphic illustrations, and/or outlining of a message in a separate box. Since the message in question contained none of these devices, it was highly unlikely that many people would ever read it.

Finally, the message was located at the same position as the reverse of the card numbers, making it harder to read.

I note that, in contrast to the reference to the fees, virtually every other message on the cards, front and back, was more conspicuous—from the bank logo, to the message regarding how to check the balance, to the message regarding the need for a signature.

The terms and conditions

During 2005, the reference to the dormancy fee was not in the terms and conditions governing the cards. I am aware that Commerce Bank did not charge any fees on gift cards during some timeframe within 2005.

At times when the dormancy fee was in place, and the disclosure related to it was included in the cards' terms and conditions, it was buried in line after line of opaque "legalese". Terms and conditions presented in tiny text are the sorts of things that few people read.

With the cards produced some of the years (e.g., 2006-2008), the text was not even separated into paragraphs, further decreasing the likelihood that it would be read.



Card carriers

The card carriers did not introduce any reference to fees until 2009, when a fifth "FAQ" was added at the bottom of the list. In order to be effective, the recipient would have to pull the carrier out in the first place, then read through the FAQs when there was no particular reason to be searching for information.

Indeed, I am confident that it was not true to refer to the question of whether or not there were dormancy fees ("Is there a monthly administration fee?") as an FAQ or "frequently asked question" because I would be shocked to find that such a question was ever asked at all, let alone asked frequently.

Greeting cards

I understand that, when a card is purchased at one of the defendants' branches, the card is packaged in a gift box. When a recipient opens the box, a folded greeting card is the first thing that the recipient sees. Under the folded greeting card is the gift card itself.

These greeting cards open up and include a place for the purchaser to fill in information about the card, i.e. its value, who the purchaser is, and who the recipient is. Within the folded greeting card is a pouch in which the terms and conditions of the cards sit. Not only do the terms and condition suffer the flaws I discussed above, but the manner in which the terms and conditions are presented to the recipients is flawed.

A recipient should not have to "search" for terms and conditions which govern a gift card. The banks at issue packaged the terms and conditions inside a gift box, within a greeting card that must be opened, and inside a pouch within the greeting card.

In sum, none of the materials presented to recipients alert them to the fact that dormancy fees would be charged. Recipients would also have no way of knowing when the card was purchased, which was the "start date" for the onset of the dormancy fee. They also would not know how much value was left on the card at any given time, since this required calling a number or logging onto a website, both also mentioned in the fine print on the back of the card.



Conclusion

My opinion, to a reasonable degree of professional certainty, is that Commerce Bank and TD Bank failed to provide information adequate to have a reasonable chance of alerting purchasers and recipients to the presence of dormancy fees—either on the cards themselves or in any of the other materials provided.

Indeed, the banks knew or should have known that their customers would not know about these fees, given:

- The counter-intuitive nature of the fees.
- The inaccurate references in their promotional materials to “free” and “no purchase fee”.
- The failure to include a direct instruction to bank employees to advise purchasers to inform the recipients of the cards that a dormancy fee is automatically collected on the card after a certain time period.
- The failure to provide the purchase date of the card in the materials designed to reach the recipient of the gift card.
- The fact that the fees are often automatically collected prior to the expiration date located on the front of the card.
- The failure to apply well known and documented methods for improving the conspicuity of the relevant information.

Regarding this last, the banks presented the relevant information in such a way that it was unlikely to be noticed, something that those who created the materials knew or should have known to be the case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen B. Wilcox', written over a horizontal line.

Stephen B. Wilcox, Ph.D.
Principal

EXHIBIT "G"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CASE NO. 2:09-cv-00135-TJS

CHAWEZI MWANTEMBE, MARGARET
MUNTHALI and FERN RUTBERG on
behalf of themselves and
all others similarly situated,
Plaintiffs,
vs.
TD BANK, N.A., et al.
Defendants.

Oral deposition of BRADLEY
MANN, taken at Silverman & Fodera,
P.C., 1835 Market Street, 26th Floor,
Philadelphia, Pennsylvania, on
Monday, March 15, 2010, commencing at
approximately 2:24 p.m., before
JANICE D. BURNES, a Registered
Professional Reporter, Certified
Court Reporter, and Notary Public,
pursuant to notice.

2 (Pages 2 to 5)

<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES: 2 MICHAEL P. LALLI, ESQUIRE mlalli@civilrights.com 3 SILVERMAN & FODERA, P.C. 1835 Market Street, 26th Floor 4 Philadelphia, Pennsylvania 19103 215-561-2100 5 Appearing on behalf of Plaintiffs 6 7 MICHAEL BERMAN, ESQUIRE michael@meberman.com 310 Riverside Boulevard 8 Suite 31 Long Beach, New York 11561 9 516-320-9076 Appearing on behalf of Plaintiffs 10 11 BARAK A. BASSMAN, ESQUIRE bassmanb@pepperlaw.com 12 STEPHEN G. HARVEY, ESQUIRE harveys@pepperlaw.com 13 PEPPER HAMILTON, LLP 3000 Two Logan Square 14 18th & Arch Streets Philadelphia, Pennsylvania 19103 15 215-981-4000 Appearing on behalf of Defendants 16 17 EXAMINATION INDEX 18 19 BRADLEY MANN BY MR. BASSMAN 3 20 BY MR. LALLI 86 21 22 23 24</p>	<p style="text-align: center;">Page 4</p> <p>1 everything that we are saying, so 2 I'll need you to answer all of my 3 questions verbally. 4 Sometimes in conversation 5 people respond with shrugs, nods, 6 gestures, um-hums. Here everything 7 will have to be verbal. 8 Is that okay? 9 A. Yes. 10 Q. Also, at any time if you 11 don't understand a question that I 12 ask you, please let me know, and I'll 13 rephrase. If you answer my question, 14 I'm going to assume you understand 15 it. 16 Is that okay? 17 A. Yes. 18 Q. If at any time you need to 19 take a break, let me know. I'll try 20 to wrap up my questioning as fast as 21 I can to get you out to a break. 22 Feel free to take breaks whenever you 23 feel like you need them. 24 You are not a prisoner</p>
<p style="text-align: center;">Page 3</p> <p>1 BRADLEY MANN, having been 2 duly sworn, was examined and 3 testifies as follows: 4 EXAMINATION 5 BY MR. BASSMAN: 6 Q. Good afternoon, Mr. Mann. 7 A. Good afternoon. 8 Q. My name is Barak Bassman. 9 I'm an attorney for TD Bank in this 10 case, and we met just a minute ago. 11 I want to go over just a 12 couple of things before we get 13 started substantively that will make 14 this afternoon go a little more 15 quickly and smoothly. 16 MR. LALLI: Before you get 17 into that, Barak, I just wanted to -- 18 it's usual stipulations, other than 19 we are going to have him read and 20 sign. 21 MR. BASSMAN: That's fine. 22 BY MR. BASSMAN: 23 Q. First, as you can see, the 24 court reporter is writing down</p>	<p style="text-align: center;">Page 5</p> <p>1 here, you are not being interrogated 2 by the CIA at a block site. 3 Sometimes witnesses think 4 that if they don't take breaks and 5 try to be martyrs, it will get done 6 faster. You won't. 7 The process takes the time 8 it takes. So I'd really encourage 9 you if you feel at any time you need 10 to take a break, just let me know. 11 A. Thank you. 12 Q. A question I need to ask 13 you, and nothing personal: Are you 14 under the influence of drugs or 15 alcohol right now? 16 A. No. 17 Q. Are you on any medications 18 that could affect your ability to 19 remember events? 20 A. No. 21 Q. What did you do to prepare 22 for today's deposition? 23 A. I met with my attorney 24 previous to coming in this room.</p>

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 Q. Other than talking to your 2 attorney, did you do anything else to 3 prepare? 4 A. No. 5 Q. By the way, could you, just 6 for the record, state your full legal 7 name and your address. 8 A. Bradley Mann, 26 Mayberry 9 Avenue, Monroe Township, New Jersey 10 08831. 11 Q. Do you have a middle name, 12 Mr. Mann? 13 A. Craig, C-R-A-I-G. 14 Q. Do you ever go by any 15 nicknames or aliases, like Brad or 16 something like that? 17 A. Brad. 18 Q. And how long have you been 19 at your current address? 20 A. Approximately five years. 21 Q. When did you graduate from 22 high school? 23 A. 1986. 24 Q. What high school?</p>	<p>1 then I relocated and I attended 2 additional classes at Farleigh 3 Dickinson University. 4 Q. I take it from your last 5 answer at some point you moved from 6 Long Island to New Jersey? 7 A. Yes. 8 Q. Do you recall when that 9 was? 10 A. Sometime around the year 11 2000. 12 Q. In your MBA program did you 13 have any particular concentration or 14 major? 15 A. I didn't go far enough to 16 have a concentration at that point. 17 Q. Any other formal education 18 after college? 19 A. No. 20 Q. What was your first job 21 after you graduated from SUNY Albany? 22 A. I worked as an auditor for 23 the -- I'll give you the initials -- 24 ILGWU, which stands for the</p>
Page 7	Page 9
<p>1 A. Wantagh High School. 2 Q. Where is that? 3 A. New York. 4 Q. Is that in Long Island? 5 A. Yes. 6 Q. Do you have any education 7 after high school? 8 A. Yes. 9 Q. Can you describe that? 10 A. I have a bachelor of 11 science degree from the State 12 University of New York at Albany. 13 Q. And what was your major? 14 A. Accounting. 15 Q. And what year did you 16 graduate? 17 A. 1989. 18 Q. After graduating from SUNY 19 Albany, any further education? 20 A. I finished approximately 21 one year of an MBA program. 22 Q. Where was the program? 23 A. I obtained classes at -- 24 originally at Hofstra University, and</p>	<p>1 International Ladies' Garment 2 Workers' Union. 3 Q. Is that what's now Unite? 4 A. I believe that's their 5 slogan. I don't know if that's their 6 name. 7 Q. How long were you with the 8 ILGWU? 9 A. Approximately one year. 10 Q. And where did you go from 11 there? 12 A. I went to what at the time 13 was called Republic National Bank. 14 Q. And how long were you at 15 Republic National Bank? 16 A. Well, it later changed its 17 name, but the time I was -- it became 18 HSBC. But at that entity I was there 19 approximately nine years. 20 Q. And can you walk me through 21 what positions you had at that bank? 22 A. I was -- when I first -- 23 about approximately three years I 24 worked as a credit analyst for</p>

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 domestic credit specializing in 2 middle market companies. 3 For about approximately 4 another three years I worked in -- as 5 an operations analyst in the 6 operations area of the bank. 7 And approximately the next 8 three years I worked in trading 9 operations on the foreign exchange 10 desk. 11 Q. When you were an operations 12 analyst, could you describe in a 13 little more detail what you did? 14 A. We acted as sort of an 15 internal control function, and we 16 would go and review different 17 segments within the organization to 18 see if they met controls, and also 19 looked into the profitability 20 analysis for each group. 21 Q. In your nine years at 22 Republic, which turned into HSBC, did 23 you have any involvement with the 24 retail banking side of the</p>	<p>1 president in the project management 2 group, would be the correct title. 3 Q. And what did the project 4 management group do? 5 A. We helped to facilitate 6 special projects on behalf of the 7 finance unit of the company. 8 Q. Do you recall any 9 particular examples of the kinds of 10 projects you worked on? 11 A. Sure. One of the projects 12 was implementation of new mortgage 13 products. 14 We had to interface with 15 the various subsidiaries to make sure 16 that their systems were able to 17 compute the projects -- products, 18 excuse me. 19 Q. And while you were at 20 Chase, did you do any work on gift 21 cards? 22 A. No, not that I can recall. 23 Q. Did any of your work at 24 Chase involve credit cards?</p>
Page 11	Page 13
<p>1 organization? 2 A. Not in any significant 3 capacity. 4 Q. And when you worked as a 5 trading analyst, you said you were 6 involved in foreign currency trading? 7 A. Yes, foreign currency 8 option specialist. 9 Q. Were you actually a 10 trader? 11 A. No. I worked in the back 12 office. 13 Q. After you left HSBC, where 14 did you go? 15 A. I went to what was then 16 called Chase Manhattan Mortgage 17 Corp., which later became JPMorgan 18 Chase. 19 Q. And how long were you with 20 that institution? 21 A. Approximately four to five 22 years. 23 Q. And what did you do there? 24 A. I was an assistant vice</p>	<p>1 A. Other than interfacing with 2 a unit that -- in Delaware that I 3 believe issued credit cards, I 4 specifically -- I did not deal with 5 credit cards myself. 6 Q. What was the nature of the 7 interface that you had with the 8 credit card unit in Delaware? 9 A. The organization was doing 10 a restructuring, and they were trying 11 to change the legal entity structure, 12 ownership of the entity. And we 13 worked with the finance and legal 14 departments in effecting that legal 15 change. 16 Q. Did your responsibilities 17 at Chase ever involve debit cards? 18 A. No. 19 Q. After you left Chase, where 20 did you go to work? 21 A. I left Chase due to 22 disability. 23 Q. Have you been on disability 24 ever since you left Chase?</p>

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 A. Yes.</p> <p>2 Q. Besides yourself, have any</p> <p>3 of your family members ever worked in</p> <p>4 the banking sector?</p> <p>5 A. No, not to my knowledge.</p> <p>6 Q. Are there any newspapers</p> <p>7 that you read regularly?</p> <p>8 A. No.</p> <p>9 Q. Any websites you check</p> <p>10 regularly for news?</p> <p>11 A. Yes.</p> <p>12 Q. What sites?</p> <p>13 A. New York</p> <p>14 Times.com, MSNBC.com, Fox News, Fox</p> <p>15 Business News.</p> <p>16 MR. LALLI: Both sides of</p> <p>17 the aisle, huh?</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. BASSMAN:</p> <p>20 Q. Truly fair and balanced.</p> <p>21 A. Absolutely.</p> <p>22 MR. LALLI: I think Fern</p> <p>23 was Fox and Chawezi was MSNBC, right?</p> <p>24 MR. BASSMAN: No, Chawezi</p>	<p>1 Q. What magazines?</p> <p>2 A. Popular Mechanics, Popular</p> <p>3 Science, Field and Stream.</p> <p>4 There may be a few more</p> <p>5 personal interests like that, but I</p> <p>6 don't recall at the moment if I have</p> <p>7 current subscriptions to them.</p> <p>8 Q. Do you read any business or</p> <p>9 news magazines?</p> <p>10 A. I used to have a</p> <p>11 subscription to Newsweek, which</p> <p>12 lapsed about six months ago.</p> <p>13 Q. Any others?</p> <p>14 A. Any other what?</p> <p>15 Q. Business or news magazines.</p> <p>16 A. No.</p> <p>17 Q. Any TV news programs you</p> <p>18 watch regularly?</p> <p>19 A. I wouldn't say regularly.</p> <p>20 I watch the standard four</p> <p>21 or five cable business shows, you</p> <p>22 know, but I wouldn't say I'm a</p> <p>23 regular viewer of any single one.</p> <p>24 Q. What are the standard four</p>
Page 15	Page 17
<p>1 was a CNN junkie, in her words.</p> <p>2 THE WITNESS: I like to</p> <p>3 keep my options open.</p> <p>4 BY MR. BASSMAN:</p> <p>5 Q. How often do you check</p> <p>6 these websites?</p> <p>7 A. Either daily or every other</p> <p>8 day.</p> <p>9 Q. The New York Times site, do</p> <p>10 you have a subscription to the site?</p> <p>11 A. No.</p> <p>12 Q. Does not having a</p> <p>13 subscription restrict what you can</p> <p>14 see there?</p> <p>15 A. I don't know, because I</p> <p>16 haven't had a subscription to compare</p> <p>17 it to.</p> <p>18 Q. Any other websites that you</p> <p>19 check regularly for news?</p> <p>20 A. Not that I can recall at</p> <p>21 the moment.</p> <p>22 Q. Do you read any magazines</p> <p>23 regularly?</p> <p>24 A. Yes.</p>	<p>1 or five cable business shows?</p> <p>2 A. Fox News, MSNBC, CNN. I</p> <p>3 don't have a particular preference.</p> <p>4 If I'm in the mood for the news, I</p> <p>5 put on whichever one doesn't have the</p> <p>6 most commercials at the moment.</p> <p>7 Q. CNBC?</p> <p>8 A. Yes.</p> <p>9 Q. Are you a member of any</p> <p>10 consumer rights organizations?</p> <p>11 A. Not to my knowledge.</p> <p>12 What would qualify as a</p> <p>13 consumer rights organization?</p> <p>14 Q. I'll rephrase the</p> <p>15 question.</p> <p>16 Have you donated any money</p> <p>17 in the last ten years to any</p> <p>18 organization whose mission includes</p> <p>19 fighting consumer fraud?</p> <p>20 MR. LALLI: Objection.</p> <p>21 You can answer if you can.</p> <p>22 THE WITNESS: I don't -- I</p> <p>23 wouldn't know of any organization</p> <p>24 that I've donated money to that does</p>

6 (Pages 18 to 21)

Page 18	Page 20
<p>1 fight consumer fraud. 2 BY MR. BASSMAN: 3 Q. Have you ever been involved 4 as a plaintiff or a defendant in a 5 lawsuit before this one? 6 A. Yes. 7 Q. How many prior lawsuits? 8 A. One. 9 Q. When was that? 10 A. The incident occurred in 11 1998. I don't know when the lawsuit, 12 you would call, began. I imagine 13 shortly after that. 14 Q. What was the subject matter 15 of the lawsuit? 16 A. Personal injury lawsuit to 17 my wife. 18 Q. You were a co-plaintiff? 19 A. I believe so. 20 Q. Any other lawsuits? 21 A. No. 22 Q. And, again, this is another 23 question I have to ask, so don't take 24 this personally.</p>	<p>1 occasion? 2 A. Sometime in 19 -- in 3 probably May of 1998, I believe. 4 Q. May of '98? 5 A. I'm sorry, 2008. I'm 6 sorry. I was thinking of my job 7 history. 8 Q. So one was May 2008. 9 And do you recall when the 10 other time was? 11 A. It was sometime late in 12 2008, near the holidays. 13 Q. So around December of 2008? 14 A. I would say that would be 15 accurate, approximately. 16 Q. In May 2008, how many gift 17 cards did you buy? 18 A. My wife and I collected 19 money on behalf of the teachers in 20 our children's Hebrew school, and we 21 went to -- we went to purchase -- we 22 weren't account holders then, so we 23 went with a friend who was an account 24 holder.</p>
Page 19	Page 21
<p>1 Have you ever been 2 convicted of a crime? 3 A. No. 4 Q. Have you ever bought a gift 5 card from a bank? 6 A. Yes. 7 Q. Which banks? 8 A. TD Bank. 9 Q. When you say "TD," are you 10 including Commerce as TD or just TD 11 itself? 12 A. I have only purchased from 13 TD. 14 Q. Is TD Bank where you 15 maintain your checking and savings 16 accounts? 17 A. I have a checking account 18 at TD Bank, as well as at Capital One 19 Bank. 20 Q. And on how many occasions 21 have you purchased gift cards? 22 A. Approximately two 23 occasions. 24 Q. When was the first</p>	<p>1 Q. And when you say you went 2 with a friend who was an account 3 holder, were the gift cards actually 4 purchased by the friend? 5 A. Yes. 6 Q. What was that friend's 7 name? 8 A. Dori Daus. 9 Q. Can you spell that? 10 A. D-O-R-I D-A-U-S. 11 Q. And do you know what town 12 she lives in? 13 A. Monroe, New Jersey. 14 Q. And how many gift cards did 15 you buy with Ms. Daus in May of 2008? 16 A. I believe there were five. 17 Q. And these were for gifts to 18 five separate Hebrew school teachers? 19 A. Yes. 20 Q. And the May was for the end 21 of the school year? 22 A. Yes. 23 Q. And how many parents 24 contributed to these gift card</p>

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 purchases in May of '08?</p> <p>2 A. I would -- I would -- it</p> <p>3 would be a total estimate, I would</p> <p>4 say approximately 30 to 40.</p> <p>5 My wife was the one who did</p> <p>6 all the collecting of the money and</p> <p>7 really took care of it.</p> <p>8 Q. So I take it your wife was</p> <p>9 tasked by the parents' association</p> <p>10 with calling up all the parents in</p> <p>11 the Hebrew school, getting the fund</p> <p>12 together, and then going to the bank?</p> <p>13 A. Yes. She's the youth</p> <p>14 advisor for the synagogue, so she was</p> <p>15 the one that really did it. I just</p> <p>16 happened to go with her that day.</p> <p>17 Q. What's your wife's name?</p> <p>18 A. Robynn Mann.</p> <p>19 Q. Robynn with an I or a Y?</p> <p>20 A. It's spelled R-O-B-Y-N-N.</p> <p>21 Q. I would have never have</p> <p>22 guessed the two Ns.</p> <p>23 A. No, it's quite unusual,</p> <p>24 especially with the last name of two</p>	<p>1 places like Barnes & Noble and things</p> <p>2 like that. So I would imagine they</p> <p>3 were something in that approximate</p> <p>4 amount.</p> <p>5 Q. And I take it from your</p> <p>6 previous testimony you don't know</p> <p>7 exactly how many parents contributed,</p> <p>8 but were each set of parents asked to</p> <p>9 contribute an equal amount?</p> <p>10 A. Typically, that's how they</p> <p>11 did it, but I wasn't involved in that</p> <p>12 part of it.</p> <p>13 Q. Do you recall how much you</p> <p>14 contributed?</p> <p>15 A. No.</p> <p>16 Q. More than \$100?</p> <p>17 A. Less.</p> <p>18 Q. Less than \$50?</p> <p>19 A. Probably.</p> <p>20 Q. Less than \$25?</p> <p>21 A. I would guess -- I'm</p> <p>22 sorry. Less than 25, could you</p> <p>23 explain that? Per child? Per</p> <p>24 total?</p>
Page 23	Page 25
<p>1 Ns.</p> <p>2 Q. And do you recall what the</p> <p>3 denominations of these gift cards</p> <p>4 were?</p> <p>5 A. No. I know they weren't</p> <p>6 for a lot of money, but I don't</p> <p>7 remember the exact amount.</p> <p>8 Q. Were they all the same</p> <p>9 amount?</p> <p>10 A. I don't recall. The two of</p> <p>11 them really took care of everything,</p> <p>12 you know, and I was just kind of</p> <p>13 there because we were running</p> <p>14 errands. And, you know, I was just</p> <p>15 there, but they took care of</p> <p>16 everything.</p> <p>17 Q. And you said you don't</p> <p>18 recall the exact amount of the card</p> <p>19 denominations.</p> <p>20 Were each of those cards</p> <p>21 under \$100?</p> <p>22 A. Yes. Typically, in the</p> <p>23 past the gift cards were about \$25</p> <p>24 that we had purchased from other</p>	<p>1 Q. Sure. Just to clarify, I'm</p> <p>2 just trying to figure out of the</p> <p>3 amount of money that was raised, the</p> <p>4 pot that was raised to buy the five</p> <p>5 gift cards, how much did you</p> <p>6 personally contribute into that pot?</p> <p>7 A. I would estimate they</p> <p>8 probably asked somewhere around \$5</p> <p>9 per child that you have in the</p> <p>10 school. So we have four children, so</p> <p>11 I guess around \$20.</p> <p>12 Q. Four children. Mazel tov.</p> <p>13 A. Thank you.</p> <p>14 Q. And who came up with the</p> <p>15 idea of buying TD Bank gift cards for</p> <p>16 the five Hebrew school teachers?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you suggest this?</p> <p>19 A. No.</p> <p>20 Q. And I take it you weren't</p> <p>21 the one who made the decision to</p> <p>22 spend the money on TD Bank gift cards</p> <p>23 as opposed to any other kind of gift?</p> <p>24 A. That's right.</p>

8 (Pages 26 to 29)

Page 26	Page 28
<p>1 Q. In May of '08, did you 2 physically go to the branch when the 3 gift cards were bought? 4 A. Yes. 5 Q. And which branch was that? 6 A. East Brunswick, New Jersey. 7 Q. Is that branch on Ryders 8 Lane? 9 A. Yes. Ryders and Route 18. 10 I believe it's Ryders Lane. I would 11 have called it Route 18, but I 12 believe it's Ryders. 13 Q. And did you speak to a 14 customer service representative? 15 A. No, I didn't speak with 16 anyone. My wife and her friend 17 handled the transaction. 18 Q. Did you hear that 19 discussion between your wife and her 20 friend and the customer service 21 representative? 22 A. No. 23 Q. Did either your wife or her 24 friend tell you anything about their</p>	<p>1 Are you sure it was May, 2 but you are not sure when in May? Or 3 was it around May, it could have been 4 June? 5 A. It may have been May or it 6 may have been June. I couldn't say 7 for sure. 8 Q. And were you present when 9 the gift cards were given to the 10 recipients? 11 A. No. 12 Q. Do you know how much time 13 elapsed between when the gift cards 14 were bought and when they were given 15 as gifts? 16 A. No. 17 Q. Did you see the packaging 18 they were given in when they were 19 presented as gifts? 20 A. Can you clarify that? 21 Q. Sure. Even if you weren't 22 there when the gifts were actually 23 given, did you see what they were 24 wrapped in? Wrapping paper? Boxes?</p>
Page 27	Page 29
<p>1 discussion with the customer service 2 representative? 3 A. No. 4 Q. Did you see the packaging 5 that the gift cards came in after 6 they were purchased in May of '08? 7 A. No. 8 Q. Just to pin down the 9 date -- and I understand these dates 10 are a little while ago so there might 11 be some fuzziness. 12 Are you sure that these 13 gift cards were purchased in May of 14 '08 as opposed to maybe June of '08? 15 MR. LALLI: Objection, only 16 that he testified it was 17 approximately May. 18 If you can answer more 19 specifically. 20 BY MR. BASSMAN: 21 Q. Actually, just to clarify, 22 I just want -- when you say 23 approximately May, I just want to 24 see.</p>	<p>1 A. From the bank or from the 2 present that was given to the 3 teachers? 4 Q. Actually both, if you 5 know. 6 A. I didn't see what came from 7 the bank. 8 I believe when they 9 presented to the teachers, they had a 10 ceremony at the synagogue where they 11 gave them presents. At the end of 12 the year at one of the services they 13 are usually given presents. 14 And I think they were in 15 like a gift bag, you know, from like 16 the Dollar Store, that type of thing. 17 Q. And by the way, what's the 18 name of the synagogue? 19 A. Congregation Etzchaim. 20 Q. The gift giving ceremony, 21 that was on a Saturday morning 22 service? 23 A. I don't recall. It could 24 have been during one of the holidays</p>

9 (Pages 30 to 33)

Page 30	Page 32
<p>1 as well. So I don't recall which 2 service it would have happened in. 3 Q. Could it have been a Friday 4 night service? 5 MR. LALLI: Objection. 6 THE WITNESS: Like I said, 7 I don't recall. 8 BY MR. BASSMAN: 9 Q. Were you at that service 10 when the gifts were given in 2008? 11 A. I believe so. 12 Q. Ms. Daus, the friend who 13 had the account at TD Bank, had she 14 ever worked in the banking industry, 15 to the best of your knowledge? 16 A. To the best of my 17 knowledge, no. 18 Q. And the second time you 19 bought gift cards I think you said 20 was late 2008? 21 A. Yes. 22 Q. How many gift cards did you 23 buy then? 24 A. Approximately three. I</p>	<p>1 would be a good opportunity to buy 2 them. 3 Q. When you say you saw the 4 sign in the window that said no fee, 5 do you recall anything else that was 6 said on that sign? 7 A. I don't recall the exact 8 wording. It was a large green sign, 9 about three, four feet tall, probably 10 by about two feet wide. 11 And I think it said the 12 wording of free gift cards, inquire 13 within, or something to that effect. 14 I don't remember the exact wording on 15 it. 16 Q. Was your wife with you on 17 this trip to the bank? 18 A. No. 19 Q. Did you go by yourself? 20 A. My son was with me. 21 Q. How old's your son? 22 A. He is 11 currently, so that 23 would have made him about nine. 24 Q. Before you saw this sign in</p>
Page 31	Page 33
<p>1 believe it was three. 2 Q. Could it have been two? 3 A. Possible. I believe it was 4 two or three. 5 Q. And did you buy these cards 6 yourself? 7 A. Yes. 8 Q. Did you buy the cards at 9 the same TD Bank branch in East 10 Brunswick? 11 A. Yes. 12 Q. Why were you buying gift 13 cards in late 2008? 14 A. My wife likes to buy -- she 15 likes to buy gifts, always likes to 16 shop early for people. And we -- 17 when we were there, we saw there was 18 a sign on the window about no-fee 19 gift cards. 20 And my thought would be 21 since we had discussed -- we were 22 thinking about giving gift cards this 23 year for people's -- relatives' 24 birthdays and whatnot, I thought it</p>	<p>1 the window that said free gift cards, 2 had you seen any advertising for TD 3 Bank gift cards? 4 A. I believe in a newspaper, 5 yes. 6 Q. Do you recall what 7 newspaper? 8 A. No. 9 Q. Do you recall when this 10 was? 11 A. No. 12 Q. Do you recall the substance 13 of the ad? 14 A. No. I don't recall the 15 exact wording, no. 16 Q. Do you recall any of the 17 wording? 18 A. Yes. 19 Q. What do you recall? 20 A. It discussed free gift 21 cards as well, similar to the sign on 22 the window. Yes, that's what I 23 recall. 24 Q. And do you recall, you</p>

10 (Pages 34 to 37)

Page 34	Page 36
<p>1 know, roughly, how close in time it</p> <p>2 was between when you saw the</p> <p>3 newspaper ad and when you went in</p> <p>4 late 2008 to buy two or three gift</p> <p>5 cards?</p> <p>6 A. Probably in the preceding</p> <p>7 few weeks.</p> <p>8 Q. Any other TD Bank gift card</p> <p>9 advertisements that you have seen?</p> <p>10 MR. LALLI: Just in banks</p> <p>11 or newspapers?</p> <p>12 BY MR. BASSMAN:</p> <p>13 Q. Anywhere. Anywhere.</p> <p>14 Internet, billboards, TV, newspapers,</p> <p>15 signs, anything.</p> <p>16 A. Yes.</p> <p>17 Q. What are they?</p> <p>18 A. I don't know if I could</p> <p>19 quantify all of them. I mean,</p> <p>20 there's been commercials on TV.</p> <p>21 There's been commercials on the</p> <p>22 radio, I believe.</p> <p>23 Are you asking the nature</p> <p>24 of the advertisements?</p>	<p>1 multiple newspaper ads about free</p> <p>2 gift cards?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever read any TD</p> <p>5 Bank press releases?</p> <p>6 A. No.</p> <p>7 Q. Have you ever visited the</p> <p>8 TD Bank website?</p> <p>9 A. Yes.</p> <p>10 Q. When you visited the TD</p> <p>11 Bank website, did you ever look for</p> <p>12 information about gift cards on the</p> <p>13 website?</p> <p>14 A. No.</p> <p>15 Q. Did you ever see any</p> <p>16 Internet advertising for TD Bank gift</p> <p>17 cards?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. Do you remember seeing any</p> <p>20 billboards advertising TD Bank gift</p> <p>21 cards?</p> <p>22 A. Not specifically.</p> <p>23 Q. Any signs advertising TD</p> <p>24 Bank gift cards other than the one</p>
Page 35	Page 37
<p>1 Q. Well, start with the</p> <p>2 nature. TV, radio.</p> <p>3 A. Just general advertisements</p> <p>4 about convenient banking and things</p> <p>5 of that nature.</p> <p>6 Q. Outside of the one sign you</p> <p>7 mentioned in the branch and the</p> <p>8 newspaper ad, were any of those TD</p> <p>9 Bank ads, again, in any medium</p> <p>10 specifically about gift cards?</p> <p>11 A. I believe so. I believe I</p> <p>12 saw the same ads repeated again about</p> <p>13 free gift cards.</p> <p>14 Q. You saw ads on TV about</p> <p>15 free gift cards?</p> <p>16 A. I believe in the newspaper.</p> <p>17 Q. Did you see any TV ads</p> <p>18 about free gift cards?</p> <p>19 A. I don't recall if I did or</p> <p>20 did not.</p> <p>21 Q. What about radio ads?</p> <p>22 A. It's possible. I don't</p> <p>23 recall.</p> <p>24 Q. You might have seen</p>	<p>1 you mentioned you saw in the window</p> <p>2 of the East Brunswick branch?</p> <p>3 A. I've seen -- yes, I've seen</p> <p>4 it on other TD Bank branches.</p> <p>5 Q. Same sign?</p> <p>6 A. Same or similar.</p> <p>7 Q. I take it you saw these</p> <p>8 passing them on the road or walking</p> <p>9 by?</p> <p>10 A. Yes.</p> <p>11 Q. Did the no-fee sign make a</p> <p>12 difference to you in your decision in</p> <p>13 late 2008 to buy gift cards from TD</p> <p>14 Bank?</p> <p>15 A. Yes.</p> <p>16 Q. How so?</p> <p>17 MR. LALLI: I'm going to</p> <p>18 object, only because he testified --</p> <p>19 I think he testified no fee as well</p> <p>20 as free.</p> <p>21 MR. BASSMAN: Okay. Just</p> <p>22 that sign is all I was driving at.</p> <p>23 BY MR. BASSMAN:</p> <p>24 Q. Did that sign make a</p>

11 (Pages 38 to 41)

<p style="text-align: center;">Page 38</p> <p>1 difference to you?</p> <p>2 Let me rephrase that</p> <p>3 question.</p> <p>4 Did that sign that said</p> <p>5 free, no fee in the bank branch</p> <p>6 influence your decision to buy gift</p> <p>7 cards from TD Bank in late 2008?</p> <p>8 A. Yes.</p> <p>9 Q. How so?</p> <p>10 A. Previously, we had</p> <p>11 purchased American Express or Visa</p> <p>12 gift cards from places like Rite Aid,</p> <p>13 and there's an additional fee at the</p> <p>14 cash register of approximately 4.95</p> <p>15 or 5.95 that they add on to the face</p> <p>16 value of the card.</p> <p>17 And being that we were</p> <p>18 watching our money, it was to our</p> <p>19 best advantage not to have to pay an</p> <p>20 additional fee to purchase the cards.</p> <p>21 Q. And when you bought gift</p> <p>22 cards from TD Bank in late 2008, were</p> <p>23 you charged a purchase fee?</p> <p>24 A. No.</p>	<p style="text-align: center;">Page 40</p> <p>1 Manalapan.</p> <p>2 Q. And Dori Daus, is that her</p> <p>3 full name, or is Dori short for</p> <p>4 something?</p> <p>5 A. I believe it's short for</p> <p>6 something, but I don't know for</p> <p>7 sure. I mean, I don't know what it</p> <p>8 is. I know it's short for something.</p> <p>9 Q. And do you know what her</p> <p>10 street address is?</p> <p>11 A. I know she lives on</p> <p>12 Monmouth Road. Monmouth Road. I</p> <p>13 don't know the house number.</p> <p>14 Q. And the sign that you saw</p> <p>15 in late 2008 in the TD Bank branch,</p> <p>16 did that say free on it, no fee on</p> <p>17 it, or both?</p> <p>18 A. I don't recall my -- I'm</p> <p>19 sorry. I don't recall.</p> <p>20 Q. When you bought gift cards</p> <p>21 in late 2008, did you buy them from a</p> <p>22 customer service representative at</p> <p>23 the bank?</p> <p>24 A. Is customer service</p>
<p style="text-align: center;">Page 39</p> <p>1 THE WITNESS: Can I ask if</p> <p>2 we can take a break when it's</p> <p>3 possible?</p> <p>4 MR. BASSMAN: Right now is</p> <p>5 fine.</p> <p>6 Off the record.</p> <p>7 (Recess.)</p> <p>8 BY MR. BASSMAN:</p> <p>9 Q. Mr. Mann, I just want to</p> <p>10 circle back to a couple of things we</p> <p>11 were talking about before the break.</p> <p>12 You mentioned that you have</p> <p>13 been at your current address in</p> <p>14 Monroe for about five years?</p> <p>15 A. Yes.</p> <p>16 Q. Where did you live for the</p> <p>17 five years before that?</p> <p>18 A. Manalapan, New Jersey.</p> <p>19 Q. And what was the street</p> <p>20 address?</p> <p>21 A. Two addresses during the</p> <p>22 last five years. The first was 175</p> <p>23 Pine Brook Road, Manalapan. And the</p> <p>24 other was 35 Winthrop Drive,</p>	<p style="text-align: center;">Page 41</p> <p>1 representative the person that I</p> <p>2 would typically call a platform</p> <p>3 person?</p> <p>4 Q. Yeah. What I mean by</p> <p>5 customer service representative is</p> <p>6 not the teller, but the people that</p> <p>7 sit to the side by the desks at the</p> <p>8 bank branch.</p> <p>9 A. Okay. Yes, that's who I</p> <p>10 purchased it from.</p> <p>11 Q. And did you talk to the</p> <p>12 customer service representative at</p> <p>13 all about your gift card purchase?</p> <p>14 A. Sure, I had to ask them --</p> <p>15 yes, is my answer.</p> <p>16 Q. Tell me everything you can</p> <p>17 recall about that conversation.</p> <p>18 A. I mentioned to them that we</p> <p>19 were interested in -- we saw the sign</p> <p>20 in the window and are interested in</p> <p>21 purchasing a few gift cards. And,</p> <p>22 you know, do we purchase it from this</p> <p>23 person, and they said yes.</p> <p>24 And they asked, you know,</p>

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 the denominations, how many we 2 wanted. And it was pretty much a 3 straightforward transaction. There's 4 nothing -- yeah, that's my answer. 5 Q. Do you recall anything else 6 that was said in that conversation 7 either by you or by the customer 8 service rep? 9 A. I remember asking if like 10 the sign said that they are free, 11 no-fee cards, because, you know, I 12 wanted to get my full money's worth. 13 And they said yes. 14 Q. Anything else you remember 15 about the conversation? 16 A. Not specifically, no. 17 Q. Was it a man or a woman who 18 you met with? 19 A. A man. 20 Q. Do you recall his name? 21 A. No. 22 Q. Do you recall roughly what 23 time of day you were in the branch to 24 buy the cards?</p>	<p>1 Q. Whom did she give them to? 2 A. That I don't specifically 3 recall. 4 Q. Did you ever hear from your 5 wife or anyone else that there was 6 any problem using the gift cards that 7 you bought in late 2008? 8 A. No. 9 Q. By the way, by late 2008 10 had you set up a checking account at 11 TD Bank? 12 A. Yes. 13 Q. And do you recall 14 approximately what time you 15 established an account at TD Bank? 16 A. Approximately the same time 17 period as when the cards were 18 purchased. 19 Q. Did you set up the account 20 in order to purchase the cards? 21 A. No. 22 Q. When you purchased the 23 cards, did they come in a box? 24 A. I believe so. There was</p>
Page 43	Page 45
<p>1 A. Middle of the day. 2 Q. And after you bought these 3 gift cards in late 2008, did you have 4 any further communication in any way 5 with the bank about these gift 6 cards? 7 And by that I mean e-mail, 8 phone call, in person discussion, any 9 type of communication. 10 A. Not that I can recall. 11 Q. Did you ever call any bank 12 customer service lines in connection 13 with the gift cards you purchased? 14 A. No. 15 Q. To whom did you give the 16 gift cards that you bought in late 17 2008? 18 A. I didn't give them to 19 anyone. My wife had taken -- I gave 20 them to my wife, I guess would be the 21 answer. 22 Q. And did your wife in turn 23 give them to anybody else? 24 A. Yes.</p>	<p>1 some packaging around them, and I 2 think it was a small box. 3 Q. And was it one card -- each 4 card had its own separate box? 5 A. I don't recall. 6 Q. Do you recall if the boxes 7 had ribbons on them? 8 A. No, I don't recall if it 9 did or did not have a ribbon. 10 Q. Was there any material 11 besides the physical gift card itself 12 in the box or packaging? 13 MR. LALLI: When you say 14 "material," do you mean cardboard or 15 do you mean -- 16 MR. BASSMAN: Written 17 materials. 18 THE WITNESS: At the time 19 of purchase I didn't notice that. 20 BY MR. BASSMAN: 21 Q. Did you notice it later? 22 A. Yes. 23 Q. When? 24 A. Approximately a week or two</p>

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 later.</p> <p>2 Q. And how did you come to</p> <p>3 notice the additional materials?</p> <p>4 A. We were at a birthday party</p> <p>5 for one of my children's friends, and</p> <p>6 it was at their home. And the</p> <p>7 parents were sitting around talking,</p> <p>8 and the subject of, you know, current</p> <p>9 events and whatnot came up.</p> <p>10 And someone was talking</p> <p>11 about they had heard that there were</p> <p>12 gift cards that were incurring all of</p> <p>13 these sorts of fees.</p> <p>14 And through that discussion</p> <p>15 we had mentioned that I had just</p> <p>16 purchased these gift cards, and we</p> <p>17 were so excited because they were</p> <p>18 free, no-fee gift cards.</p> <p>19 And a person was saying,</p> <p>20 Well, they said on the news you have</p> <p>21 to check everything that comes with</p> <p>22 it. And I kind of had a little bit</p> <p>23 of a discussion with them saying, No,</p> <p>24 we checked everything.</p>	<p>1 Actually, just to go back,</p> <p>2 at the birthday party, do you recall</p> <p>3 who told you about gift card fees?</p> <p>4 A. It was one of the parents</p> <p>5 from my son's Cub Scout Troop.</p> <p>6 Q. And what was the person's</p> <p>7 name?</p> <p>8 A. I don't even think I know</p> <p>9 their name. It was one of the</p> <p>10 parents who I don't know their name.</p> <p>11 Q. Okay. And after you came</p> <p>12 home and you read the material about</p> <p>13 dormancy fees, did you call up any of</p> <p>14 the Hebrew school teachers to whom</p> <p>15 gift cards were given in May --</p> <p>16 around May of 2008 and inform them</p> <p>17 that there could be dormancy fees</p> <p>18 charged to their cards?</p> <p>19 A. No.</p> <p>20 Q. Did you talk to your wife</p> <p>21 about whether anyone should contact</p> <p>22 those teachers and tell them that</p> <p>23 there could be dormancy fees charged</p> <p>24 to their cards?</p>
Page 47	Page 49
<p>1 So at their insistence,</p> <p>2 when we got home, we had pulled apart</p> <p>3 the packaging, and I believe there</p> <p>4 was some additional papers. Either</p> <p>5 it was behind the gift cards or</p> <p>6 somewhere in the packaging there was</p> <p>7 some additional information in there.</p> <p>8 Q. And what did you learn from</p> <p>9 reading that additional information?</p> <p>10 A. If I remember correctly, it</p> <p>11 discussed after a certain period of</p> <p>12 time, several months, I don't</p> <p>13 remember the number, that there was</p> <p>14 some type of dormancy-type fee per</p> <p>15 month that was charged if the card</p> <p>16 wasn't fully used or had a balance</p> <p>17 still on it.</p> <p>18 Q. And what did you do with</p> <p>19 that information that you learned</p> <p>20 about the dormancy fees?</p> <p>21 A. I don't understand the</p> <p>22 question.</p> <p>23 Q. Sure. Let me ask you</p> <p>24 something slightly different.</p>	<p>1 A. I told her that there --</p> <p>2 what I learned in the conversation.</p> <p>3 I didn't discuss whether we should</p> <p>4 call the Hebrew school teachers or</p> <p>5 not.</p> <p>6 Q. And at the time that you</p> <p>7 found out about the dormancy fees,</p> <p>8 had your wife given any of the cards</p> <p>9 that you bought in late 2008 away to</p> <p>10 anyone?</p> <p>11 A. I don't recall the exact</p> <p>12 timing. She may have.</p> <p>13 Q. Were you at all concerned</p> <p>14 that the people to whom she might</p> <p>15 have given a gift card wouldn't know</p> <p>16 about these dormancy fees?</p> <p>17 MR. LALLI: Objection.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: Can you</p> <p>20 explain what you mean by concerned?</p> <p>21 BY MR. BASSMAN:</p> <p>22 Q. Sure. Were you worried</p> <p>23 that your wife may have just given a</p> <p>24 gift card to someone who wouldn't</p>

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 know that if they didn't spend the</p> <p>2 card quickly enough they could incur</p> <p>3 fees?</p> <p>4 MR. LALLI: Same objection.</p> <p>5 THE WITNESS: Yeah, I don't</p> <p>6 -- I don't recall specifically.</p> <p>7 BY MR. BASSMAN:</p> <p>8 Q. Do you recall either you or</p> <p>9 your wife making any attempt to</p> <p>10 inform any recipient of any gift card</p> <p>11 that you bought about potential</p> <p>12 dormancy fees?</p> <p>13 A. No.</p> <p>14 Q. By the way, are you sure</p> <p>15 that all the gift cards that you</p> <p>16 bought in late 2008 were, in fact,</p> <p>17 given away to people?</p> <p>18 A. I'm not sure if they all</p> <p>19 were or not.</p> <p>20 Q. You mentioned that after</p> <p>21 the birthday party, you went and</p> <p>22 looked at the packaging that came</p> <p>23 with the card.</p> <p>24 Did you look at the card</p>	<p>1 A. Not specifically, no.</p> <p>2 Q. Do you have credit cards?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever seen terms</p> <p>5 and conditions for those credit</p> <p>6 cards?</p> <p>7 A. Most likely I would have.</p> <p>8 Q. Based on -- I believe you</p> <p>9 testified you had about 15 years of</p> <p>10 experience in the banking industry;</p> <p>11 is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Based upon your 15 years of</p> <p>14 experience in the banking industry,</p> <p>15 do you understand generally that</p> <p>16 cards issued by banks generally come</p> <p>17 with terms and conditions?</p> <p>18 MR. LALLI: Objection.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: Okay.</p> <p>21 Could you repeat the</p> <p>22 question, please?</p> <p>23 MR. BASSMAN: Could you</p> <p>24 read it back?</p>
Page 51	Page 53
<p>1 itself?</p> <p>2 A. I must have. I think there</p> <p>3 was one card in the packaging still,</p> <p>4 so I must have looked at that card.</p> <p>5 Q. Do you recall reading both</p> <p>6 the front and the back of the card?</p> <p>7 A. Not specifically. I may</p> <p>8 have flipped the card over. I</p> <p>9 couldn't tell you specifically what</p> <p>10 it said or not.</p> <p>11 Q. Do you recall if the</p> <p>12 information about dormancy fees you</p> <p>13 saw was on the card itself or in the</p> <p>14 materials that came in the package,</p> <p>15 the other materials?</p> <p>16 A. My recollection is it was</p> <p>17 in the other materials.</p> <p>18 Q. By the way, at the time</p> <p>19 that you purchased these cards in</p> <p>20 late 2008, did you understand that</p> <p>21 the cards would be governed by a set</p> <p>22 of terms and conditions?</p> <p>23 A. No.</p> <p>24 Q. Did you think about it?</p>	<p>1 (The court reporter read</p> <p>2 back the following:</p> <p>3 "Q. Based upon your 15</p> <p>4 years of experience in the banking</p> <p>5 industry, do you understand generally</p> <p>6 that cards issued by banks generally</p> <p>7 come with terms and conditions?")</p> <p>8 THE WITNESS: I don't</p> <p>9 understand my experience in the</p> <p>10 banking industry. I had nothing to</p> <p>11 do with consumer banking, so I don't</p> <p>12 see how the question relates to this</p> <p>13 instance.</p> <p>14 BY MR. BASSMAN:</p> <p>15 Q. Would you ever buy a gift</p> <p>16 card again from TD Bank?</p> <p>17 A. I couldn't speculate at the</p> <p>18 moment.</p> <p>19 Q. Do you have any current</p> <p>20 plans to buy another gift card from</p> <p>21 TD Bank?</p> <p>22 A. I don't have any current</p> <p>23 plans, no.</p> <p>24 Q. By the way, have you ever</p>

15 (Pages 54 to 57)

Page 54	Page 56
<p>1 received a bank gift card yourself?</p> <p>2 A. No.</p> <p>3 Q. After you learned about the</p> <p>4 dormancy fees when you opened the</p> <p>5 package up, did you contact legal</p> <p>6 counsel?</p> <p>7 A. Your question is after -- I</p> <p>8 mean, immediately after or --</p> <p>9 Q. Immediately after is my</p> <p>10 question.</p> <p>11 A. No, not immediately after.</p> <p>12 Q. At some point thereafter</p> <p>13 did you contact counsel?</p> <p>14 A. Yes.</p> <p>15 Q. And was that Mr. Berman?</p> <p>16 A. Yes.</p> <p>17 Q. How did you know</p> <p>18 Mr. Berman?</p> <p>19 A. Mr. Berman and I grew up in</p> <p>20 the same neighborhood -- he actually</p> <p>21 lived down the street -- since I was</p> <p>22 a child.</p> <p>23 Q. And do you recall how much</p> <p>24 time elapsed from when you found out</p>	<p>1 A. I prefer not to say. It's</p> <p>2 not relevant to this.</p> <p>3 Q. Whatever this Facebook page</p> <p>4 is or whoever it's maintained for,</p> <p>5 was there ever anything posted on it</p> <p>6 about dormancy fees for gift cards?</p> <p>7 A. No.</p> <p>8 Q. Outside of that Facebook</p> <p>9 page, do you have a page on any other</p> <p>10 social networking site?</p> <p>11 A. No.</p> <p>12 Q. Have you made any attempts</p> <p>13 to recruit any other plaintiffs in</p> <p>14 this case?</p> <p>15 MR. LALLI: Objection.</p> <p>16 THE WITNESS: I don't know</p> <p>17 what you mean by "recruit."</p> <p>18 Could you explain that?</p> <p>19 BY MR. BASSMAN:</p> <p>20 Q. I'll ask a broader</p> <p>21 question.</p> <p>22 Leaving out your attorneys,</p> <p>23 have you spoken to anyone about this</p> <p>24 lawsuit?</p>
Page 55	Page 57
<p>1 about the dormancy fees and you first</p> <p>2 contacted Mr. Berman?</p> <p>3 A. I would say in the</p> <p>4 neighborhood of a few weeks.</p> <p>5 Q. Did you make any attempt to</p> <p>6 complain to TD Bank about the</p> <p>7 dormancy fees?</p> <p>8 A. No.</p> <p>9 Q. Did you try to complain to</p> <p>10 any government agency about TD Bank's</p> <p>11 dormancy fees?</p> <p>12 A. No.</p> <p>13 Q. Did you post anything on</p> <p>14 the Internet about TD Bank's dormancy</p> <p>15 fees?</p> <p>16 A. No.</p> <p>17 Q. Do you have a Facebook</p> <p>18 page?</p> <p>19 A. Not -- I maintain a</p> <p>20 Facebook page, but it's not for</p> <p>21 myself, so I think the answer would</p> <p>22 be no.</p> <p>23 Q. Who do you maintain it</p> <p>24 for?</p>	<p>1 A. Yes.</p> <p>2 Q. Who have you spoken to</p> <p>3 about this lawsuit?</p> <p>4 A. My wife.</p> <p>5 Q. Anyone else?</p> <p>6 A. No.</p> <p>7 Q. Did you ask your wife to</p> <p>8 join the lawsuit as a plaintiff?</p> <p>9 A. No.</p> <p>10 Q. Do you believe that TD Bank</p> <p>11 misled you?</p> <p>12 MR. LALLI: Objection.</p> <p>13 But you can answer the</p> <p>14 question.</p> <p>15 THE WITNESS: Could you</p> <p>16 explain that, by "misled"? I don't</p> <p>17 --</p> <p>18 BY MR. LALLI:</p> <p>19 Q. Sure.</p> <p>20 A. Could you clarify that?</p> <p>21 Q. Let me ask a more specific</p> <p>22 question.</p> <p>23 In connection with selling</p> <p>24 you gift cards, do you think that TD</p>

16 (Pages 58 to 61)

Page 58	Page 60
<p>1 Bank engaged in any conduct to 2 deceive you? 3 MR. LALLI: Objection. 4 THE WITNESS: No. 5 BY MR. BASSMAN: 6 Q. Do you think TD Bank has 7 done anything that has harmed you 8 personally? 9 MR. LALLI: Objection. 10 THE WITNESS: Can you 11 explain harm? I don't understand 12 what exactly you are asking. 13 BY MR. BASSMAN: 14 Q. Sure. I'll break it down. 15 In connection with its gift 16 card program, has TD Bank done 17 anything that caused you financial 18 loss? And by "you," I mean you 19 personally. 20 A. No. 21 Q. In connection with its gift 22 card program, has TD Bank done 23 anything that's caused you emotional 24 distress?</p>	<p>1 A. Thank you. 2 Q. I take it you didn't seek 3 any medical treatment for any 4 emotional distress caused by TD Bank? 5 A. I don't mean to split 6 hairs. Your question has a double 7 negative, I believe. 8 Q. Sure. Let me ask you a 9 little straighter. 10 In order to treat the 11 emotional distress you just 12 described, did you ever see a doctor? 13 A. No. 14 Q. Did you ever take any 15 medication to treat that emotional 16 distress? 17 A. No. 18 Q. Did you ever see a 19 therapist to treat that emotional 20 distress? 21 A. No. 22 Q. If you were to win this 23 case, what relief would you like the 24 court to order for you?</p>
Page 59	Page 61
<p>1 A. Yes. 2 Q. What did TD Bank do to 3 cause you emotional distress? 4 A. Well, I purchased gift 5 cards which I later learned would 6 incur fees that I wasn't aware of. 7 And being that my wife had 8 given these as gifts, it's 9 embarrassing that if someone were to 10 use them and they don't get the full 11 value of what we purchased, it's 12 embarrassing and upsetting. 13 Q. Did you ever learn that any 14 of the recipients of the gift cards 15 that you bought were unable to use 16 the full value of their cards? 17 A. No, I never learned that. 18 MR. LALLI: Are you okay, 19 Brad? 20 THE WITNESS: Yes, I'm 21 okay. 22 BY MR. BASSMAN: 23 Q. Okay. If at any point you 24 need another break, feel free.</p>	<p>1 MR. LALLI: Objection. 2 THE WITNESS: Can you 3 explain that further? 4 BY MR. BASSMAN: 5 Q. Sure. Let me try to break 6 that one down a little more. 7 In this case are you asking 8 the court to award you personally 9 money damages? 10 A. I'm asking the court to 11 award a class of people who have been 12 injured, not only for myself. 13 Q. Would you be one of the 14 people who you think should be 15 awarded money damages? 16 A. I'm not an attorney to 17 speculate. I don't know if a person 18 would be eligible for damages or not. 19 Q. Would you like the courts 20 to order a refund of any fees that 21 were charged on gift cards that you 22 purchased? 23 A. Yes. 24 Q. And would you prefer for</p>

17 (Pages 62 to 65)

Page 62	Page 64
<p>1 that refund to go to you or to the</p> <p>2 recipient of the card?</p> <p>3 MR. LALLI: Objection.</p> <p>4 THE WITNESS: I would</p> <p>5 assume the recipients.</p> <p>6 BY MR. BASSMAN:</p> <p>7 Q. Do you want the court to</p> <p>8 order TD Bank to change any of its</p> <p>9 conduct?</p> <p>10 MR. LALLI: Objection.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. BASSMAN:</p> <p>13 Q. And what changes would you</p> <p>14 like the court to order?</p> <p>15 A. I would like to have a more</p> <p>16 clear disclosure of any and all fees</p> <p>17 or any other wording -- any other</p> <p>18 type of costs that would be incurred</p> <p>19 by purchasing or maintaining --</p> <p>20 having a card, a gift card.</p> <p>21 THE WITNESS: Could I ask</p> <p>22 that we take a break?</p> <p>23 MR. BASSMAN: Sure. Off</p> <p>24 the record.</p>	<p>1 discussed it with her in one</p> <p>2 conversation or multiple</p> <p>3 conversations?</p> <p>4 A. It probably was two or</p> <p>5 three times we had discussed it.</p> <p>6 There was -- we discussed what we</p> <p>7 learned and what our friend told us</p> <p>8 at the party that I mentioned</p> <p>9 previously.</p> <p>10 Q. Anything else you remember</p> <p>11 about those conversations?</p> <p>12 A. No, not specifically.</p> <p>13 Q. Was your wife surprised at</p> <p>14 what you had to tell her about the</p> <p>15 dormancy fees?</p> <p>16 MR. LALLI: Objection.</p> <p>17 THE WITNESS: Yes, she was.</p> <p>18 BY MR. BASSMAN:</p> <p>19 Q. Was she upset?</p> <p>20 MR. LALLI: Objection.</p> <p>21 THE WITNESS: Yes, I would</p> <p>22 say upset.</p> <p>23 BY MR. BASSMAN:</p> <p>24 Q. Did she tell you she wanted</p>
Page 63	Page 65
<p>1 (Recess.)</p> <p>2 BY MR. BASSMAN:</p> <p>3 Q. Mr. Mann, is your wife</p> <p>4 currently employed?</p> <p>5 A. No.</p> <p>6 Q. Has she previously been</p> <p>7 employed?</p> <p>8 A. Yes.</p> <p>9 Q. Just generally, what was</p> <p>10 her job?</p> <p>11 A. She worked for the same</p> <p>12 bank that I had worked previously,</p> <p>13 for Republic National Bank. We met</p> <p>14 when she worked in the credit</p> <p>15 department there.</p> <p>16 Q. And did she ever work in</p> <p>17 retail banking?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. After you opened the</p> <p>20 package and saw the information about</p> <p>21 the dormancy fees, did you discuss</p> <p>22 what you learned with your wife?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Do you recall if you</p>	<p>1 to contact the people that she gave</p> <p>2 the cards to tell them about this?</p> <p>3 A. No.</p> <p>4 Q. By the way, the gift cards</p> <p>5 that you bought in late 2008, do you</p> <p>6 know if those cards were ever used?</p> <p>7 MR. LALLI: Objection.</p> <p>8 THE WITNESS: I don't know</p> <p>9 if they were used or if they were not</p> <p>10 used.</p> <p>11 BY MR. BASSMAN:</p> <p>12 Q. Would you be surprised if</p> <p>13 the bank's records showed that they</p> <p>14 were never used to make a purchase?</p> <p>15 MR. LALLI: Objection.</p> <p>16 THE WITNESS: No, I</p> <p>17 wouldn't be surprised.</p> <p>18 BY MR. BASSMAN:</p> <p>19 Q. Why wouldn't that surprise</p> <p>20 you if they were given away as gifts?</p> <p>21 A. There aren't many things</p> <p>22 that surprise me anymore.</p> <p>23 Q. When you met with the</p> <p>24 customer service representative to</p>

18 (Pages 66 to 69)

Page 66	Page 68
<p>1 buy these gift cards in late 2008, 2 did the customer service 3 representative mention that there 4 were terms and conditions that govern 5 the cards? 6 A. Not that I recall. 7 Q. And when you say "Not that 8 I recall," is it possible that he may 9 have and you just don't remember one 10 way or the other right now? 11 MR. LALLI: Objection. 12 THE WITNESS: Could you 13 repeat the question? 14 MR. BASSMAN: Can you read 15 it back? 16 (The court reporter read 17 back the following: 18 "Q. And when you say 19 "Not that I recall," is it possible 20 that he may have and you just don't 21 remember one way or the other right 22 now?") 23 THE WITNESS: I don't think 24 there was any mention of terms and</p>	<p>1 Q. Acknowledge at the time of 2 purchase? 3 A. Sure. 4 Q. Any other changes to the 5 disclosure practices of the bank with 6 regard to gift card fees that you 7 would like to see put in place? 8 MR. LALLI: Objection. 9 THE WITNESS: Sure. I mean 10 the signage is very -- was extremely 11 not clear, so the sign should be much 12 clearer. 13 BY MR. BASSMAN: 14 Q. Anything else? 15 MR. LALLI: Objection. 16 THE WITNESS: Sitting here 17 at the moment, I don't have those 18 specific answers. 19 BY MR. BASSMAN: 20 Q. Why did you contact 21 Mr. Berman after finding out about 22 the dormancy fees? 23 And to be clear, I don't 24 want to know anything that you two</p>
Page 67	Page 69
<p>1 conditions. 2 BY MR. BASSMAN: 3 Q. But you don't recall all 4 the exact words that were said in 5 that conversation sitting here a 6 couple years later? 7 A. That's correct. 8 Q. You mentioned earlier that 9 you would like the court to order TD 10 Bank to have better disclosures of 11 fees charged in connection with gift 12 cards. 13 What better disclosures do 14 you think there should be? 15 MR. LALLI: Objection. 16 THE WITNESS: I don't know 17 if I could speculate on how you do 18 it, but you should have the customer 19 somehow acknowledge exactly if there 20 is additional terms and conditions; 21 acknowledge -- as you use the term 22 terms and conditions, acknowledge 23 what they are. 24 BY MR. BASSMAN:</p>	<p>1 said after you contacted him. I'm 2 just asking what led you to call him 3 up. 4 A. Well, I knew Michael was an 5 attorney. 6 And when I spoke with my 7 wife she said, Why don't you -- she 8 suggested that I talk to him and see 9 if he has any ideas about, you know, 10 what could be done. And so I reached 11 out and gave Michael a call and -- 12 Q. And I don't want to know 13 what you two discussed. That's 14 privileged. 15 A. Okay. 16 Q. By the way, have you ever 17 spoken to an individual named Angelo 18 Capizzi? 19 A. No, not to my knowledge. I 20 don't know that name. 21 Q. Have you ever spoken to a 22 woman named Maggie or Margaret 23 Munthali? 24 A. I don't know that name</p>

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 either, no.</p> <p>2 Q. Fern Rutberg?</p> <p>3 A. No.</p> <p>4 Q. Chawezi Mwantembe?</p> <p>5 A. No.</p> <p>6 MR. LALLI: Or Bertha.</p> <p>7 BY MR. BASSMAN:</p> <p>8 Q. Or Bertha Mwantembe?</p> <p>9 A. No.</p> <p>10 Q. How about Sandra Elmoznino?</p> <p>11 A. No.</p> <p>12 Q. You mentioned earlier that</p> <p>13 your Complaint asks for you to be</p> <p>14 appointed as a representative of a</p> <p>15 class of purchasers of gift cards.</p> <p>16 Do you recall that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. What do you understand your</p> <p>19 obligations to be as a representative</p> <p>20 of a class?</p> <p>21 A. To look out for the</p> <p>22 interests of other people who may</p> <p>23 have been wronged by this incident.</p> <p>24 Q. Have you ever read any</p>	<p>1 advertisements, on the Internet,</p> <p>2 anything -- about the costs that TD</p> <p>3 Bank incurs to maintain gift cards?</p> <p>4 A. No.</p> <p>5 Q. Same question, but this</p> <p>6 time the costs incurred to replace a</p> <p>7 gift card.</p> <p>8 A. Is the question the costs</p> <p>9 that TD Bank incurs?</p> <p>10 Q. Yes, the costs to TD Bank.</p> <p>11 A. No, I have never seen</p> <p>12 anything like that.</p> <p>13 MR. BASSMAN: Off the</p> <p>14 record.</p> <p>15 (Recess.)</p> <p>16 BY MR. BASSMAN:</p> <p>17 Q. Mr. Mann, do you know where</p> <p>18 the gift cards you bought in late</p> <p>19 2008 are today?</p> <p>20 A. No.</p> <p>21 Q. Do you still have</p> <p>22 possession of any of them?</p> <p>23 A. Not that I know of. I</p> <p>24 don't believe so.</p>
Page 71	Page 73
<p>1 documents issued by any governmental</p> <p>2 agency or authority about gift cards?</p> <p>3 A. No, not that I can recall.</p> <p>4 Q. Have you ever read any</p> <p>5 articles in a publication called the</p> <p>6 E-commerce Times?</p> <p>7 A. No.</p> <p>8 Q. As far as you know -- and,</p> <p>9 again, just to the best of your</p> <p>10 knowledge -- did any of the gift</p> <p>11 cards that you bought need to be</p> <p>12 replaced?</p> <p>13 MR. LALLI: Objection.</p> <p>14 THE WITNESS: Can you</p> <p>15 explain "replaced"?</p> <p>16 BY MR. BASSMAN:</p> <p>17 Q. Sure. The card was lost or</p> <p>18 stolen and a replacement card needed</p> <p>19 to be ordered for it.</p> <p>20 A. I don't know if that</p> <p>21 happened or not.</p> <p>22 Q. Did you ever see any</p> <p>23 representations from TD Bank in any</p> <p>24 form -- oral, written in</p>	<p>1 Q. If you wanted to find out</p> <p>2 where they are today, what would you</p> <p>3 do?</p> <p>4 A. I have like a file box</p> <p>5 where I keep my TD Bank records, so</p> <p>6 if there's -- if I wanted to look at</p> <p>7 anything related to TD Bank, I would</p> <p>8 look in that file box.</p> <p>9 Q. Have you consulted that</p> <p>10 file box at all in connection with</p> <p>11 this case?</p> <p>12 A. No.</p> <p>13 Q. Did you search that file</p> <p>14 box to see if you had any documents</p> <p>15 relating to your gift card purchases?</p> <p>16 A. I believe a few months back</p> <p>17 I looked through it, yes.</p> <p>18 Q. And did you find any</p> <p>19 documents relating to your gift card</p> <p>20 purchases there?</p> <p>21 A. I think there's a receipt</p> <p>22 of the transaction because it was</p> <p>23 drawn from my account. So I believe</p> <p>24 that was in there.</p>

20 (Pages 74 to 77)

Page 74	Page 76
<p>1 Q. Do you still have a copy of 2 that receipt? 3 A. I believe so. 4 MR. BASSMAN: Has that been 5 produced to us? 6 MR. LALLI: I don't believe 7 so, but I'll -- 8 MR. BASSMAN: If you could 9 look into that. 10 MR. LALLI: Sure. 11 BY MR. BASSMAN: 12 Q. Could you ask your wife 13 where the gift cards are now? 14 A. Yes. 15 Q. Do you think she would be 16 able to at least identify who the 17 recipients of the gift cards were? 18 MR. LALLI: Objection. 19 THE WITNESS: I don't know. 20 BY MR. BASSMAN: 21 Q. But you are pretty positive 22 that the cards were, in fact, given 23 away to someone besides her? 24 A. That was the intention.</p>	<p>1 Q. What is it? 2 A. Faith. 3 Q. F-A-I-T-H? 4 A. I believe so, but I'm not 5 positive of the spelling. It's 6 definitely Faith. I'm not sure if 7 it's F-A-Y-T-H or F-A-I-T-H. 8 Q. And does she go by her 9 maiden name or your last name? 10 A. My last name, Mann. 11 Q. And has she gone by Mann 12 for the last ten years? 13 A. Yes. 14 Q. One of the things I wanted 15 to ask you about -- and I apologize I 16 ended up not bringing extra copies. 17 The interrogatory responses 18 we received from your attorneys 19 mention the gift card purchases for 20 the Etzchaim Hebrew School teachers, 21 but listed a date as 2007 instead of 22 2008. 23 And I just wanted to 24 confirm that the Hebrew school</p>
Page 75	Page 77
<p>1 Q. And, again, I'm not trying 2 to trip you up, I just want to be 3 clear. 4 In all honesty, you don't 5 know either way whether your wife, in 6 fact, really did give them away or 7 just threw them in a drawer? 8 MR. LALLI: Objection, it's 9 been asked and answered. 10 But you can answer again. 11 THE WITNESS: Yeah, I'm not 12 aware of -- like I said, if -- I'm 13 not aware if they have been given out 14 or not. Possibly my wife would know, 15 but I don't think that she -- you 16 know, I can ask. 17 BY MR. BASSMAN: 18 Q. One of the things I wanted 19 to ask you about -- oh, your wife's 20 name, by the way, it was I remember 21 Robynn with a Y and the two Ns. 22 Does she have a middle 23 name? 24 A. Yes.</p>	<p>1 teacher purchase was in 2007. I mean 2 in 2008, excuse me. 3 Confirm the year they 4 happened. 5 A. It was during the prior 6 school year. And I believe they were 7 for end of the year gifts, that would 8 make it 2008. So I believe 2008 was 9 correct. 10 Q. And, again, just to -- I 11 know we discussed this a little 12 earlier but I just want to nail it 13 down. 14 As far as you know, neither 15 you nor your wife made any attempt 16 whatsoever to inform any of the 17 recipients of the gift cards you 18 purchased that there could be fees in 19 connection with them? 20 MR. LALLI: Objection. 21 THE WITNESS: Yes, that's 22 what I previously said. 23 BY MR. BASSMAN: 24 Q. Were you at all worried</p>

21 (Pages 78 to 81)

Page 78	Page 80
<p>1 that the gift card recipients would 2 find out about the fees some other 3 way and be upset with you? 4 MR. LALLI: Objection. 5 THE WITNESS: Could you 6 explain "worried"? I don't know if I 7 worried about it. 8 BY MR. BASSMAN: 9 Q. Was it something you 10 thought about? 11 A. Yes. 12 Q. And if it was something you 13 thought about, the possibility that a 14 gift card recipient could find out 15 about these fees and be upset with 16 you, why didn't you try to forestall 17 that by telling them about the fees 18 ahead of time? 19 A. Well, I'm not sure what you 20 mean by "ahead of time." 21 If I wasn't -- to this day 22 I didn't investigate and find out who 23 my wife had given them to and 24 whatnot, so I'm not sure even ahead</p>	<p>1 looks -- it is a document that opens 2 up with three panels. And inside the 3 center panel there is a little space 4 for a document, it's called terms in 5 this one. 6 And it sits on top of a 7 gift card holder in which the card 8 is, so it's -- when you open up 9 the -- when you take the elasticized 10 ribbon off and you take the top off, 11 and you find the tri-fold. And then 12 underneath the tri-fold is the gift 13 card and the bottom of the box. 14 MR. LALLI: That's fair. 15 BY MR. BASSMAN: 16 Q. I show you the box, 17 Mr. Mann. 18 And my first question is, 19 just look at the exterior of the 20 box. 21 Does this look similar to 22 the packaging in which the gift cards 23 you bought in late 2008 came in? 24 A. Yes.</p>
Page 79	Page 81
<p>1 of time we knew they were used or not 2 used. 3 Q. Did you ever ask your wife 4 who she gave the gift cards to? 5 A. No. 6 Q. Did she ever volunteer the 7 information to you? 8 A. No. 9 MR. BASSMAN: Steve, I was 10 wondering if you could describe the 11 exemplar on the record. 12 MR. HARVEY: Yes. I 13 just -- we have an exemplar of a gift 14 card box here. 15 I don't know that this gift 16 card box was in use in the last part 17 of 2008. You may be able to testify 18 about whether you saw it or not. 19 But I do believe there was 20 a box, and the box works generally 21 the same way. It might have been a 22 different size, I don't know. 23 But it had inside what we 24 the lawyers call a tri-fold that</p>	<p>1 Q. And if you open up the box, 2 on top you see there's the document 3 that Mr. Harvey just described as a 4 tri-fold. 5 Do you recall seeing a 6 document like that that came with the 7 gift cards that you bought in late 8 2008? 9 A. I don't remember 10 specifically whether it was a 11 tri-fold or -- there was some 12 documentation. I don't remember 13 specifically if it looked like this 14 or where it was located. 15 I seem to remember there 16 was something behind -- when I took 17 out the gift card, there was 18 something behind it. Whether it was 19 a tri-fold or not, I don't recall. 20 Q. Okay. So you do remember, 21 I guess, the ordering of the 22 packaging as being you open the box, 23 there was a card, and the other 24 materials that you described where</p>

22 (Pages 82 to 85)

Page 82	Page 84
<p>1 you saw -- you read about the</p> <p>2 dormancy fees were physically</p> <p>3 underneath the card.</p> <p>4 MR. LALLI: When you say</p> <p>5 "the card," do you mean the gift</p> <p>6 card?</p> <p>7 MR. BASSMAN: Yeah, the</p> <p>8 gift card itself. Physically</p> <p>9 underneath the gift card.</p> <p>10 THE WITNESS: Yes, that's</p> <p>11 what I remember.</p> <p>12 BY MR. BASSMAN:</p> <p>13 Q. If you could pass that back</p> <p>14 to me.</p> <p>15 If you look at the back of</p> <p>16 the gift card in the exemplar, which</p> <p>17 I just handed back to you, do you see</p> <p>18 some writing on it?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall if the gift</p> <p>21 cards that you bought in May of 2008</p> <p>22 had writing on the back of them?</p> <p>23 A. I believe they had writing</p> <p>24 on the back, yes.</p>	<p>1 Q. Yes?</p> <p>2 A. I'm sorry. What was the</p> <p>3 question?</p> <p>4 Q. Sure. I'm just asking if</p> <p>5 you see the language.</p> <p>6 A. I couldn't possibly read</p> <p>7 that without my reading glasses on.</p> <p>8 MR. LALLI: You can read it</p> <p>9 for the record.</p> <p>10 MR. BASSMAN: I'll read it</p> <p>11 for the record.</p> <p>12 MR. LALLI: But this is an</p> <p>13 exemplar.</p> <p>14 We don't know if this is</p> <p>15 the same card that was used, right?</p> <p>16 MR. BASSMAN: Right, we</p> <p>17 don't. I'm just reading what's on</p> <p>18 the back of the exemplar that</p> <p>19 Mr. Harvey described earlier.</p> <p>20 MR. LALLI: Sure.</p> <p>21 BY MR. BASSMAN:</p> <p>22 Q. And the back of this card</p> <p>23 has, among other verbiage, the</p> <p>24 following: A monthly service fee of</p>
Page 83	Page 85
<p>1 Q. Did you read that writing</p> <p>2 on the back of the cards?</p> <p>3 MR. LALLI: Objection. I</p> <p>4 think we have been through this</p> <p>5 already.</p> <p>6 But you can answer.</p> <p>7 THE WITNESS: Was the</p> <p>8 question did I read the writing on</p> <p>9 the back of the card?</p> <p>10 BY MR. BASSMAN:</p> <p>11 Q. Yeah.</p> <p>12 A. At what time? At any time</p> <p>13 when I purchased it?</p> <p>14 Q. At any time.</p> <p>15 A. Yes, I did read it. At</p> <p>16 some time I did, yes.</p> <p>17 Q. If you look on the back of</p> <p>18 the card in the exemplar box that I</p> <p>19 just handed you, there is a mention</p> <p>20 on the back of that card of a monthly</p> <p>21 maintenance fee of \$2.50 that kicks</p> <p>22 in at a certain point. If you take a</p> <p>23 look back there.</p> <p>24 A. Um-hum.</p>	<p>1 \$2.50 will be deducted from your</p> <p>2 balance starting on the first day of</p> <p>3 the month immediately following the</p> <p>4 365th day of the date your card was</p> <p>5 purchased. You can request a</p> <p>6 reissued card following the active</p> <p>7 through date.</p> <p>8 And my question for you,</p> <p>9 Mr. Mann, is do you recall any</p> <p>10 language like that being physically</p> <p>11 on any of the gift cards that you</p> <p>12 bought in late 2008?</p> <p>13 A. No, I don't recall it.</p> <p>14 Q. Okay. Do you know if your</p> <p>15 wife has discussed gift card fees</p> <p>16 with anyone besides you?</p> <p>17 MR. LALLI: Objection.</p> <p>18 THE WITNESS: No, I don't</p> <p>19 know if she did.</p> <p>20 BY MR. BASSMAN:</p> <p>21 Q. Did your wife ever speak to</p> <p>22 Mr. Berman about gift cards and gift</p> <p>23 card fees?</p> <p>24 MR. LALLI: Objection.</p>

23 (Pages 86 to 87)

<p style="text-align: center;">Page 86</p> <p>1 THE WITNESS: Not that I</p> <p>2 know of.</p> <p>3 MR. BASSMAN: Off the</p> <p>4 record.</p> <p>5 (Recess.)</p> <p>6 MR. BASSMAN: Mr. Mann, the</p> <p>7 good news is I don't have any further</p> <p>8 questions for you. So unless your</p> <p>9 counsel has questions for you, you</p> <p>10 are free to eat cheese steaks.</p> <p>11 MR. LALLI: I've just got</p> <p>12 one, and you've already testified to</p> <p>13 it.</p> <p>14 EXAMINATION</p> <p>15 BY MR. LALLI:</p> <p>16 Q. As a class rep, do you</p> <p>17 promise to fairly and adequately</p> <p>18 protect the interests of all the</p> <p>19 other class members?</p> <p>20 A. Yes, I do.</p> <p>21 MR. LALLI: We're done.</p> <p>22 (The deposition concluded</p> <p>23 at 4:17 p.m.)</p> <p>24</p>	
<p style="text-align: center;">Page 87</p> <p>1 WITNESS CERTIFICATION</p> <p>2</p> <p>3</p> <p>4 I hereby certify that I</p> <p>5 have read the foregoing transcript of</p> <p>6 my deposition testimony, and that my</p> <p>7 answers to the questions propounded,</p> <p>8 with the attached corrections or</p> <p>9 changes, if any, are true and</p> <p>10 correct.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 DATE BRADLEY MANN</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 PRINTED NAME</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	